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CENTENARY
HIGH COURT OF JUDICATURE AT ALLAHABAD
1866—1966



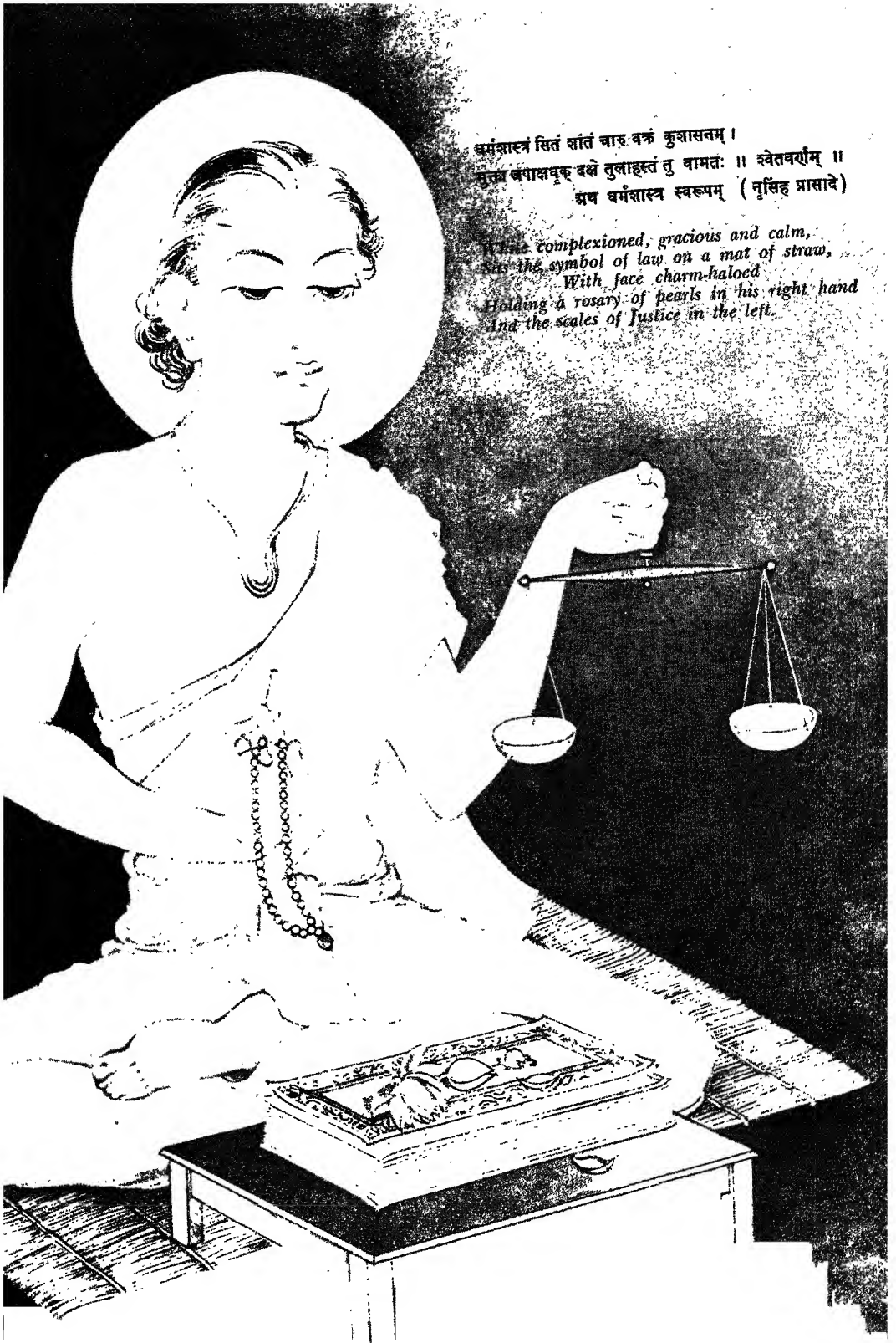
*On the occasion of the Centenary of the
ALLAHABAD HIGH COURT
this Commemoration Volume is presented
to Dr. Zakir Husain, President of India
on behalf of the Chief Justice
and his companion Judges.*

Gyanendra Kumar

*Judge, High Court
Convener,
Commemoration Volume Committee.*

वर्मशास्त्रं सितं शीतं चारुं वर्णं कुशासनम् ।
तुल्यं वपाक्षवृक् दक्षे तुलाहस्तं तु वामतः ॥ श्वेतवर्णम् ॥
अथ वर्मशास्त्रं स्वरूपम् (नृसिंह प्रासादे)

White complexioned, gracious and calm,
Sits the symbol of law on a mat of straw,
With face charm-haloed
Holding a rosary of pearls in his right hand
And the scales of Justice in the left.



CENTENARY
HIGH COURT OF JUDICATURE
AT
ALLAHABAD
1866 — 1966



COMMEMORATION
VOLUME I



High Court, Allahabad

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1966

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PEN PORTRAITS OF EMINENT JUDGES

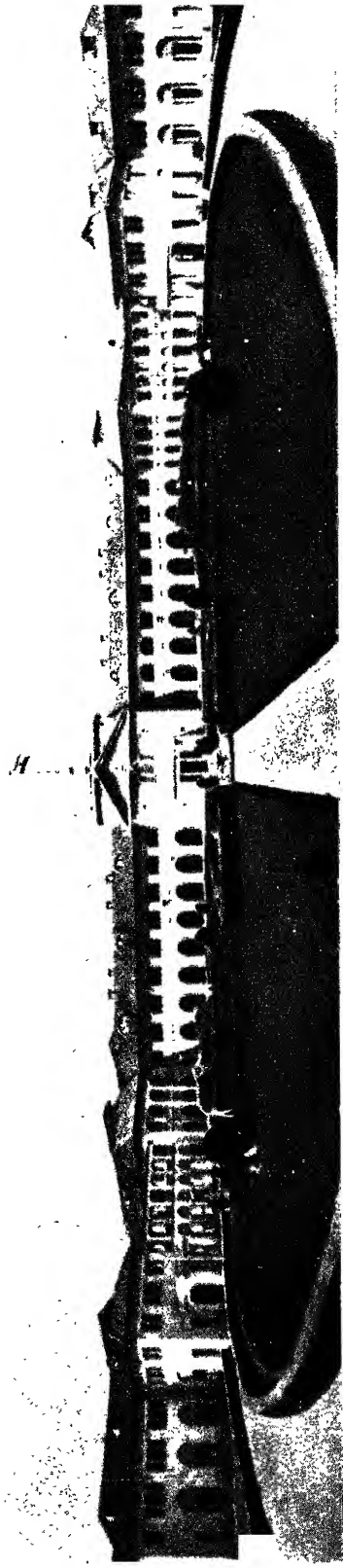
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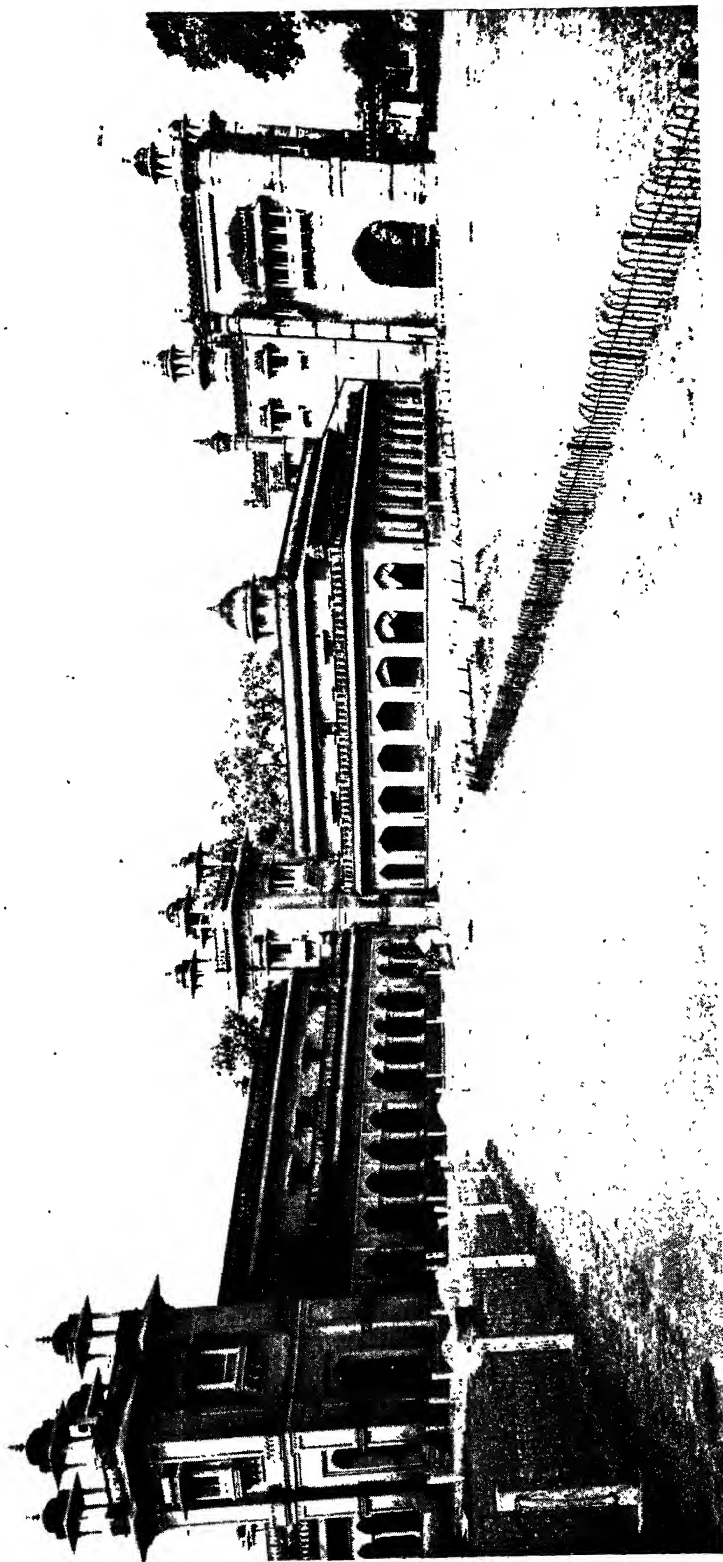
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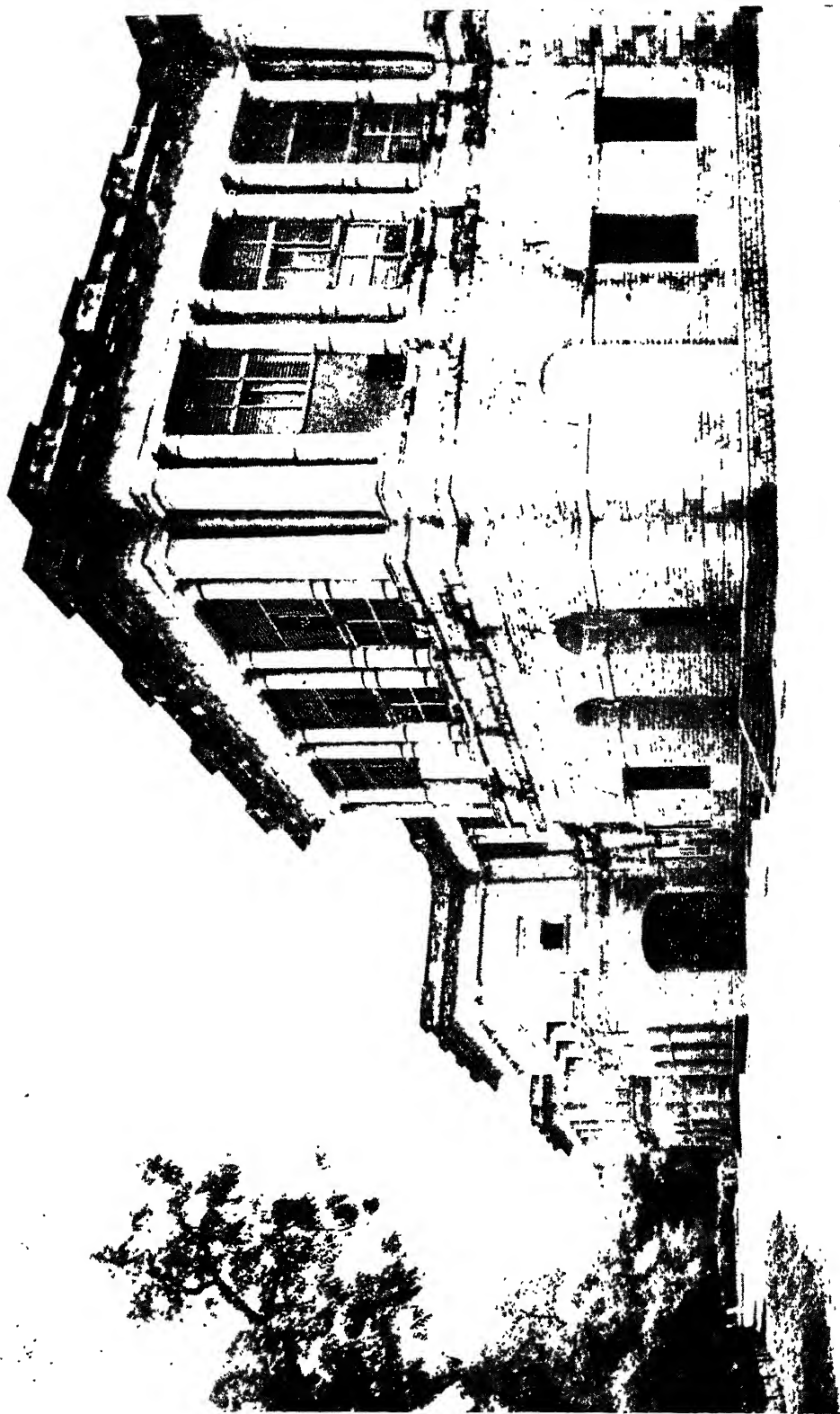


The Present High Court Building
at
Allahabad





BUILDING OF THE CHIEF COURT OF OUDH (NOW LUCKNOW BENCH OF ALLAHABAD HIGH COURT)



HIGH COURT BUILDING
(Sarojini Naidu Marg, Allahabad)



HIGH COURT BUILDING AT AGRA

2020



DR. S. RADHAKRISHNAN
President of India



राष्ट्रपति भवन,
नई दिल्ली-4.

RASHTRAPATI BHAVAN,
NEW DELHI-4.

April 1, 1966

MESSAGE

I take great pleasure in being associated through this Commemoration Volume with the centenary celebrations of the Allahabad High Court.

The Allahabad High Court, one of the oldest High Courts in the country, had comparatively humble beginnings. In June 1866, with a complement of only six Judges and an equal number of Advocates, it replaced the Sadar Diwani Adalat. Today, after a century of its existence, it is the biggest High Court in India, with six times its original number of Judges and over 10,000 Advocates on its rolls. As a Temple of Justice, it serves some 734 lakhs of our people, the largest population of any of our States. The Court can look back with justifiable pride on the galaxy of eminent men who have presided over its deliberations, Morgan, Stanley, Mahmood, Edge, Henry Richards, Lindsay, Sulaiman, P. C. Banerji, Lal Gopal Mukherjee—all of whom acquired lasting fame in the judicial field. Its Bar likewise can boast of such luminaries as Pandit Ajodya Nath, Sir Sunder Lal, Pandit Moti Lal, Sir Tej Bahadur Sapru, Madan Mohan Malviya, Pandit Jawaharlal Nehru, Dr. Kailas Nath Katju and Dr. N. P. Asthana.

With men of such outstanding calibre to nurture it, the Allahabad High Court has a great legal tradition of progress towards its present position. As the interpreters of our Constitution, the High Courts have very special responsibilities and powers. It is on the faithful and judicious exercise of these that our avowed goal of "Justice, social, economic and political" for all our citizens will be reached. I am certain that the members of the Allahabad High Court and the Bar will continue to maintain the high standard of justice, integrity, honesty and impartiality in the fearless dispensation of justice that has been set by the eminent judges and great lawyers. I send you all my very best wishes on this historic and happy occasion of your centenary.



प्रधान मंत्री भवन
PRIME MINISTER'S HOUSE
NEW DELHI

March 15, 1966.

MESSAGE



INDIRA GANDHI
Prime Minister of India

The Allahabad High Court has established a great name for itself in the world of law. The Judges and the leaders of its Bar have been among the foremost in the land and many of them have moulded the nation's history. Memories of my grandfather, Moti Lal Nehru, and our great family friend Sir Tej Bahadur Sapru and other eminent persons come to mind. Because of this association with the Allahabad High Court, for me it is a special pleasure to salute this great institution in its centenary year.

Indira Gandhi.

July 28, 1966

MESSAGE



BISWANATH DAS
Governor, Uttar Pradesh

On the occasion of the First Centenary of the High Court of Allahabad—Uttar Pradesh, the biggest and one of the most reputed High Courts of India, I convey my hearty greetings and good wishes. Uttar Pradesh, though a constituent State, holds the 9th position in point of population, among the States of the world, with her 75 million population. The High Court of Judicature has a very important role to play in maintaining the rule of law and in upholding the Constitution of India in terms of the prescribed Oath of the Hon'ble Judges. This High Court is the 4th in India, established under the British Rule—a few years after the Indian administration transferred to the Crown—from the East India Company. Allahabad had the proud privilege of

having reputed Judges, while the Bar had the reputation of having, to its credit, eminent jurists, who could be the pride of any nation or country.

Judicial process loses much of its usefulness, attraction and reputation unless it is quick, for 'justice delayed is justice denied'. The present pendency of the High Court, with near-about 50,000 cases, appeals, writ petitions, etc., is a cause for anxiety, concern and is a call for inquiry. More so, because this pendency should have gradually gone up even though the strength of the Bench has increased very nearly by about 100 per cent during these nineteen years of our Independence.

Our High Court, with the united devotion, zeal and commendable concern, both of the Bench and the Bar, has created and maintained, so far, high traditions. Good traditions, commendable as they are, become a source of inspiration for the successors in office. Let me hope that these high traditions, of this reputed High Court, be carefully and scrupulously maintained with added glory.

Biswanath Das

February 4, 1965



MESSAGE



P. B. GAJENDRAGADKAR
Chief Justice, India

On the solemn and auspicious occasion of the Centenary Celebrations of the High Court of Judicature at Allahabad, I join with great pleasure the whole brotherhood at law consisting of the Judges and members of the Bar in Uttar Pradesh in paying respectful homage to the memory of all the distinguished and illustrious Judges and lawyers of the Allahabad High Court who helped to build its proud and noble traditions in the past. I would also like to offer to the Judges and members of the Bar of the Allahabad

High Court my warm felicitations coupled with the prayerful hope and confidence that the present and the future of the Allahabad High Court would be worthy of its past. I wish the Celebrations all success.

P. B. Gajendragadkar



CHIEF JUSTICE OF INDIA,
5, Hastings Road,
New Delhi, the... April 12, 1966



A. K. SARKAR
Chief Justice, India

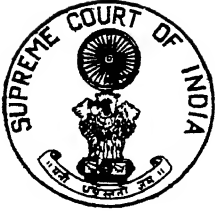
MESSAGE

Yours is not only one of the oldest High Courts in the Country but a High Court which through the years has acquired a great name and tradition. The celebration of the Centenary of such an institution is a great event and I join in it with all my heart. The law reports will disclose the contribution that your High Court has made to the building up of the judicial traditions and independence. The Allahabad High Court

has produced legal giants whose names will never be obliterated from the history of our laws and courts. On this occasion I further fervently wish that they will go on inspiring you as also the rest of us connected with courts of law all over the country.

May your Court continue the great traditions that it has built up throughout the years.

A. K. Sarkar



CHIEF JUSTICE OF INDIA,

New Delhi, the 8th July,1966.



K. SUBBA RAO
Chief Justice, India

MESSAGE

No institution deserves to survive in a democracy unless it earns public esteem. Judiciary is no exception to it. It can earn such an esteem only by discharging its duties fearlessly, impartially and expeditiously. The High Court of Judicature at ALLAHABAD has had a glorious past. It produced eminent Judges and great advocates. By mutual respect between the Bench and the Bar and by a co-operative effort, the High Court was able to maintain high standards. I have no doubt

that the present generation of Judges and advocates will emulate their predecessors and continue not only to maintain the said standards but also to improve on them. The High Court, after Independence, has an important and a new role to play. Apart from deciding disputes between parties, it is a balancing wheel of federalism ; it maintains a just equilibrium between fundamental rights and social justice. It controls the arbitrary actions of the executive. I hope and trust that the High Court of Judicature at Allahabad will continue to enforce the high constitutional concept of rule of law—a rule of law in which fundamental rights and principles of social justice are integrated—to the satisfaction of all concerned in the State.

K. Subbarao



गृह मंत्री, भारत
HOME MINISTER
INDIA

NEW DELHI:
August 9, 1966

MESSAGE



G. L. NANDA
Home Minister, India

I learn with interest that the Allahabad High Court will be observing its centenary in the month of November 1966.

One hundred years is a long time in the life of any human organisation and in a special way, this glorious institution serves to crystallise for us in its judgments the hopes, fears and ambitions of ordinary men and women. I know that this High Court will continue to cherish the high traditions that have been handed down to it over the years and make a special contribution to the achievement of social justice.

G. L. Nanda



LAW MINISTER, INDIA

NEW DELHI :
3, Motilal Nehru Place

MESSAGE



G. S. PATHAK
Law Minister, India

The Allahabad High Court completes one hundred years. As one looks back over this period, one feels that it has been a century of great strides and events. The first War of Independence, waged in 1857, ultimately led to the transfer of the Indian administration to the direct care of the British Crown. This irretrievably threw us into the main stream of British life and tradition. The pace of the impact of western liberal tradition on Indian life quickened, resulting in generating a 'spirit of criticism' and 'new social urges'. Liberalism gradually came to be accepted as the political creed of India, the result of which was a universal belief in, and recognition of, civil liberties and the Rule of Law.

The judicial system that obtains in India today is very largely fashioned on the British pattern. The contribution of High Courts established by the Crown under Letters Patent towards bringing about a uniform system of justice and law is indeed very great. This High Court, whose seat at one time was at Agra, rightly claims the privilege of being one of the oldest High Courts, and has had a very distinguished record. Great names like those of Mr. Justice Mahmood, Moti Lal Nehru, Sir Tej Bahadur Sapru, Sir Shah Mohammad Sulaiman, Jawaharlal Nehru and many others are associated with this High Court, and for one who has been associated with it for the past 38 years, reminiscences are indeed nostalgic. Great battles were fought at the Bar and innumerable human stories depicting strange aspects of human psychology and behaviour were unfolded. But one thing stands out amidst

all the din of legal battles and that is that the members of the Bench and the Bar of the Allahabad High Court always assiduously strove for upholding the Rule of Law and the protection of civil liberties even during the most trying times.

The fame the High Court has gained as an unshakable pillar of the edifice of Indian democracy and the faith it has earned of the people by its unswerving adherence to the highest traditions of Justice and Juridical thought will everlastingly redound to its credit and honour.

I pay my humble homage to this great Seat of Justice and wish it a future of even greater glory and lustre.

NEW DELHI :
13th September, 1966





शिक्षा मंत्री, भारत
EDUCATION MINISTER
INDIA

MESSAGE



M. C. CHAGLA
Education Minister, India

The Centenary of the Allahabad High Court is an important event in the history of the judiciary in India. Even in British times however deplorable the attitude of our then governors might have been towards our political aspirations, High Courts and High Court Judges dispensed justice with an even hand and protected the citizen from any illegal encroachment upon his rights by the State. In conformity with these traditions established in pre-independence India, the Allahabad High Court has contributed a very illustrious chapter to the history of Indian High Courts and has upheld the prestige and dignity of the Judges and has been responsible for the confidence which the people have in the courts and the Judges. In a democratic country where the rule of law prevails, the judiciary has even a more important role to play. I sincerely hope that in years to come the Allahabad High Court will continue to uphold the rights of citizens and act, as indeed our Constitution intended, as the custodian of their Fundamental Rights.

NEW DELHI:
January 27, 1965

M. C. Chagla



LUCKNOW
October 26, 1966

MESSAGE



SUCHETA KRIPALANI
Chief Minister, Uttar Pradesh

Our democratic system being based on the rule of law, the Constitution assigns to the High Court a special position. The Allahabad High Court with its old traditions is amply fitted to fill that position. It holds a unique place among the older High Courts of the country and its Bar and Bench have contributed many illustrious figures to the public life as well as the field of law.

I send my hearty felicitations to the Chief Justice and his colleagues and members of the High Court Bar on the historic occasion of the Centenary Celebrations.

Sucheta Kripalani



9-A CLYDE ROAD,
LUCKNOW.

October 31, 1966.

MESSAGE



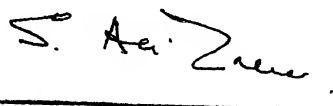
SYED ALI ZAHEER
Law Minister of Uttar Pradesh

The High Courts in India have played a vital role in making the transition, from a feudal system of society to a democratic and socialistic type under a written Constitution, possible. The rule of law is the corner stone of any democratic Government on which the entire edifice rests. It has become possible only because the High Courts in India have been able to earn during the last century the respect and admiration of the masses by administering even-handed justice, by adhering to well-known principles of modern jurisprudence, precedents, and the law of the land. When the present system of Administration of Justice with these High Courts was established in India, they were new to the country and so was the system which they were expected to administer. As years have rolled by they have adapted themselves to the changing conditions and situations, but basically they have retained the framework, and maintained high tradition of integrity and brilliant exposition of law, through their judgments. It is the greatest compliment to them that even after the revolutionary changes through which this country has passed during the last century, and recently when we earned our freedom, High Courts, in spite of being a foreign institution, retained the fullest confidence of the overwhelming masses in this country. A vast majority of the laws which are administered by these Courts—both substantive and procedural—are by no means indigenous, and yet they have gradually become a part and parcel of everyday life of all the citizens—whether a town dweller

or a villager. Even the most ardent nationalist now firmly believes that any radical change in the system of administration of justice will undermine not only the stability of the country, but will shake the confidence of the people in democracy itself.

2. The High Courts have also played the important role of a cementing force among the people living in far flung areas of this sub-continent, separated from each other by thousands of miles and having distinct languages, habits and culture. A single system of law governing all our people, and High Courts, almost uniformly, enunciating various principles, for the benefit of all, has created a unique sense of unity among us. There is no doubt that, in spite of all the din and clamour for separate political units in different parts of the country, the fact that the same law is faithfully administered by different High Courts and that there is one Supreme Court, for the whole of India and that the one law as laid down by the Supreme Court is the law of the land, creates, nourishes and strengthens a sense of unity among all the citizens of this country.

3. The High Court of Allahabad being one of the oldest, and now admittedly the largest, in the whole of India, has played a creditable part in the evolution of this sentiment. The luminaries who have adorned the Bench of this High Court in the past have left indelible mark of their high legal acumen and genius in its annals, and have made solid contribution towards the elevation of its prestige among the High Courts in this country, and won the faith of the vast millions living in this State, in its sense of justice and integrity. The celebration of the Centenary of this High Court in a befitting manner will, I am sure, go a long way towards further raising the reputation of, and respect for, this High Court not only in this country, but also in foreign countries.





ATTORNEY GENERAL,
INDIA.

NEW DELHI,
September 3, 1966

MESSAGE

I rejoice no less than the members of the Bar in Uttar Pradesh at the celebration of the Centenary of the Allahabad High Court. It is a Court with great traditions and many have been the famous Advocates who have practised there and who also have taken their full share in public life. The names that spring to one's mind immediately are those of Pandit Moti Lal Nehru and Sir Tej Bahadur Sapru. There are many more. The High Court has a history of legal learning and sound judgments, a number of which are even cited today as authorities of great weight. It has had many judges whose names have been famous in the legal profession from generation to generation. I express a hope with confidence that notwithstanding the tremendous increase in work and the corresponding increase in the number of judges which makes it the largest High Court in the country, it will continue in the same high traditions of judicial learning, efficiency and integrity and that it will continue to have the assistance of an independent and efficient Bar.

Cudapantay


Planning of the Centenary Celebrations

“Planning of the Centenary Celebrations”

By

MR. JUSTICE SHIVA NATH KATJU

Secretary, Planning Committee for the Centenary Celebrations

HE High Court of Judicature for the North-Western Provinces was constituted by a Royal Charter issued by Her Majesty Queen Victoria on March 17, 1866. The newly constituted High Court replaced the Sadar Diwani Adalat at Agra on June 13, 1866. After sometime the High Court shifted from Agra to Allahabad. It appears that all the Judges did not come together to Allahabad. The transfer from Agra to Allahabad appears to have occurred in stages. Furthermore we do not know the exact place where the High Court sat when it shifted to Allahabad. It was later that the old High Court building was constructed on the Queens Road where the Court sat till it shifted to the present buildings on November 27, 1916. The opening ceremony of the present High Court building which synchronised with the Golden Jubilee of the High Court was performed by Lord Chelmsford, the then Viceroy of India. The next 50 years of the Allahabad High Court were eventful in several

respects. It saw the first Indian Chief Justice in Sir Shah Mohammad Sulaiman. The Chief Court of Oudh was amalgamated with the Allahabad High Court, thereby forming the highest Judicial Tribunal for the entire State of Uttar Pradesh and, lastly, the country emerged as a full sovereign State and the Indian tricolour was raised over the High Court building.

On the approach of the completion of the first hundred years of the High Court, steps were taken to celebrate the Centenary of the Court in a befitting manner. The then Chief Justice, Hon'ble Mr. M. C. Desai, constituted a Planning Committee for the Centenary Celebrations which held its first meeting under the Chairmanship of the Chief Justice on December 14, 1963. The Chief Justice nominated Mr. Justice Jagdish Sahai, Mr. Justice Shiva Nath Katju, Sri Kanhaiya Lal Misra, Advocate-General, U. P., Sri Chaudhary Hyder Husain, President of the Oudh Bar Association and Sri S. C. Khare, Secretary of the High Court Bar Association as the members of the Committee. The broad outlines of the Centenary Celebrations were chalked out at the first meeting. Mr. Justice Shiva Nath Katju was nominated as the Secretary of the Committee by the Chief Justice. At the second meeting of the Committee on August 8, 1964, it was tentatively decided to hold the Centenary Celebrations in January, 1966, and the dates fixed were 29th, 30th and 31st January, 1966. Some doubt was expressed about the holding of the Centenary Celebrations before the actual completion of the hundred years of existence. The High Court had come into existence on March 17, 1866. It was not possible to hold the Centenary Celebrations in the month of June which is particularly hot at Allahabad. The Indo-Pakistan conflict broke out in September, 1965, and it ruled out all possibilities of holding the celebrations in January, 1966. With the concurrence of the opinion of the Bar, it was

finally decided to hold the Centenary Celebrations on November 25, 26 and 27, 1966.

Sri Shyam Nath Kacker, the Secretary of the High Court Bar Association became a member of the Planning Committee in place of the outgoing Secretary Sri S. C. Khare. The Chief Justice decided to make a change in the constitution of the Committee and asked the Bar Association to suggest the names of three persons for being included as members of the Committee. The Association elected Sri Gopinath Kunzru, Sri Shambhu Narain Misra and Sri Ganesh Prasad as its representatives and the aforesaid three persons were nominated as members of the Planning Committee by the Chief Justice. Sri Jai Shankar Trivedi, Advocate of the Lucknow Bench was nominated as an alternate member of the Committee along with Sri Chaudhary Hyder Husain.

On the retirement of Chief Justice Mr. M. C. Desai, Chief Justice, Mr. V. Bhargava became the Chairman of the Planning Committee. He was elevated to the Bench of the Supreme Court of India and his successor the present Chief Justice Hon'ble Mr. Nasirullah Beg became the Chairman of the Committee. On the death of Sri Chaudhary Hyder Husain, the Chief Justice nominated Sri Jai Shankar Trivedi and Sri Har Govind Dayal Srivastava as members of the Committee. Thus the Committee consists of the following persons :

1. Mr. Justice Nasirullah Beg, Chief Justice (*Chairman*).
Mr. Justice V. G. Oak (*Alternate Chairman*).
2. Mr. Justice Jagdish Sahai.
3. Mr. Justice S. N. Katju (*Secretary*).
4. Sri Kanhaiya Lal Misra, Advocate-General of U. P.
5. Sri Gopinath Kunzru, Advocate.
6. Sri Shambhu Narain Misra, Advocate.

7. Sri Ganesh Prasad, Advocate.
8. Sri Jai Shankar Trivedi, Advocate, Lucknow Bench.
9. Sri Har Govind Dayal Srivastava, Advocate, Lucknow Bench.

Officers attached to the Committee

1. Sri Bani Bilas Misra, Registrar, High Court.
2. Sri Kanhaiya Lal Chaudhry, Deputy Registrar, High Court, Allahabad.

Official attached to the Secretary

3. Sri Rais Ahmad Khan.

It had been decided at the first meeting of the Committee to hold an Exhibition of Court records. A miniature exhibition of Court records was held in the Judges' Library room which was opened by Chief Justice Sri M. C. Desai on October 1, 1964 at a ceremony held in the Marble Hall of the Court. Incidentally this was the first function held in connection with the Centenary Celebrations. The miniature exhibition was held with a view to find out the best way to display the Court records and to get an idea as to what particular records would serve the purpose. All the District Judges were asked by the High Court to send lists of the old records in their record rooms and several old files were sent for from the districts from which suitable papers were picked for display in the Exhibition.

It was decided to publish photographs of all the Judges of the Court beginning from 1866. The photographs of several old Judges were not available and the former Chief Justice Sir Orby Howell Mootham was requested to help in securing the necessary photographs from the relatives of the old Judges. It was thought that the only surviving retired Judges in the United Kingdom were Sir Orby Howell Mootham and Sir Henry Braund. Sir Orby Howell

Mootham informed the Secretary that it was not possible for him to secure the photographs of the old Judges and the best way to get them was to put in notices in some of the leading papers in the United Kingdom. The Secretary sought the help of Sardar Swaran Singh, the Union External Affairs Minister, who directed the Indian High Commission in U. K. to put in the necessary notices in some of the important papers of United Kingdom. Such notices were published in the 'London Times', 'The Daily Gazette' and 'Manchester Guardian' and the response was much more than could be expected. It was a pleasure to hear from Sir Douglas Young, Mr. Justice Pullan, Mr. Justice Plowden and Mr. Justice J. R. W. Bennet, particularly, when the Court had lost all contacts with them. It was very touching to receive letters from the members of the family of the old Judges who very kindly sent photographs of the retired Judges.

With the approach of the Centenary Celebrations it was decided to form various Sub-Committees which were constituted by the Chief Justice. The work was split up and entrusted to the following Sub-Committees :

<i>Sub-Committee</i>	<i>Convener</i>
1. Guests Reception	... Hon'ble Mr. Justice V. G. Oak.
2. Commemoration Volume	... Hon'ble Mr. Justice Jagdish Sahai. Hon'ble Mr. Justice Gyanendra Kumar.
3. Seminar and Lectures	... Hon'ble Mr. Justice Jagdish Sahai.
4. Exhibition	... Hon'ble Mr. Justice S. N. Katju.
5. Cultural Programmes	... Hon'ble Mr. Justice K. B. Asthana.
6. Lucknow	... Hon'ble Mr. Justice B. Nigam.
7. Pandal and Seating	... Hon'ble Mr. Justice Bishambhar Dayal.
8. Building Decoration	... Hon'ble Mr. Justice J. N. Takru.

- | | |
|--|-----------------------------------|
| 9. At Home and Entertainment. ... | Hon'ble Mr. Justice V. G. Oak. |
| 10. Incharge Guests in High Court Buildings. | Hon'ble Mr. Justice D. P. Uniyal. |
| 11. Celebrations in the Mofussil Courts. | Hon'ble Mr. Justice D. S. Mathur. |
| 12. Cricket ... | Hon'ble Mr. Justice M. H. Beg. |

MEMBERS OF THE PLANNING COMMITTEE

- | | |
|--|---|
| 1. Hon'ble Mr. Nasirullah Beg,
Chief Justice (<i>Chairman</i>). | 5. Sri K. L. Misra, Advocate-General. |
| 2. Hon'ble Mr. Justice V. G. Oak
(<i>Alternate Chairman</i>). | 6. Sri Gopi Nath Kunzru, Advocate. |
| 3. Hon'ble Mr. Justice Jagdish Sahai. | 7. Sri S. N. Misra, Advocate. |
| 4. Hon'ble Mr. Justice S. N. Katju
(<i>Secretary</i>). | 8. Sri Ganesh Prasad, Advocate. |
| | 9. Sri Har Govind Dayal Srivastava,
Advocate, Lucknow. |
| | 10. Sri Jai Shanker Trivedi, Advocate,
Lucknow. |

Officers Attached

- | | |
|--------------------------------|---|
| 1. Sri B. B. Misra, Registrar. | 2. Sri K. L. Chaudhry, Deputy
Registrar. |
|--------------------------------|---|

Official Attached

Sri Rais Ahmad, P. A. to Secretary.

MEMBERS OF THE SUB-COMMITTEES

Guests Reception

- | | |
|--|--------------------------------------|
| 1. Hon'ble Mr. Nasirullah Beg, Chief
Justice. | 10. Mr. Raja Ram Agarwal, Advocate. |
| 2. Hon'ble Mr. Justice V. G. Oak
(<i>Convener</i>). | 11. Mr. Ganesh Prasad, Advocate. |
| 3. Hon'ble Mr. Justice S. S. Dhavan. | 12. Mr. S. N. Misra, Advocate. |
| 4. Hon'ble Mr. Justice W. Broome. | 13. Mr. Z. H. Kazmi, Advocate. |
| 5. Hon'ble Mr. Justice R. S. Pathak. | 14. Mr. V. K. S. Chaudhry, Advocate. |
| 6. Munshi Ambika Prasad, Advocate. | 15. Mr. Laxmi Saran, Advocate. |
| 7. Mr. C. S. Saran, Advocate. | 16. Mr. J. K. Srivastava, Advocate. |
| 8. Mr. Brij Bhan Kishore, Advocate. | 17. Mr. G. P. Tandon, Advocate. |
| 9. Mr. S. N. Kacker, Advocate. | 18. Mr. R. Pandey, Advocate. |
| | 19. Mr. Brij Lal Gupta, Advocate. |

Officers Attached

1. Sri B. N. Puri, Secretary to Hon'ble Chief Justice.
2. Sri S. Abel, Assistant Registrar.

Commemoration Volume

1. Hon'ble Mr. Justice Jagdish Sahai (*Convener*).
2. Hon'ble Mr. Justice S. N. Dwivedi.
3. Hon'ble Mr. Justice Gyanendra Kumar (*Convener*).
4. Mr. K. L. Misra, Advocate-General.
5. Mr. Har Govind Dayal Srivastava, Advocate.
6. Mr. A. Banerji, Advocate.
7. Mr. S. N. Verma, Advocate.
8. Mr. Gur Dayal Srivastava, Advocate.
9. Mr. M. N. Shukla, Advocate.
10. Mr. H. K. Ghosh, Advocate.
11. Mr. N. D. Ojha, Advocate.
12. Mr. Gopal Behari, Advocate.
13. Mr. H. P. Dubey, Advocate.

Officers Attached

1. Mr. K. L. Chaudhry, Deputy Registrar.
2. Mr. S. Abel, Assistant Registrar.

Official Attached

Mr. Narsingh Bahadur, Personal Assistant.

Seminar and Lectures

1. Hon'ble Mr. Nasirullah Beg, Chief Justice.
2. Hon'ble Mr. Justice Jagdish Sahai (*Convener*).
3. Hon'ble Mr. Justice S. S. Dhavan.
4. Hon'ble Mr. Justice B. D. Gupta.
5. Hon'ble Mr. Justice Gangeshwar Prasad.
6. Hon'ble Mr. Justice H. C. P. Tripathi.
7. Mr. Jagdish Swarup, Advocate.
8. Mr. S. C. Khare, Advocate.
9. Mr. K. K. Bhattacharya, Advocate.
10. Mr. M. Asif Ansari, Advocate.
11. Mr. O. N. Mehrotra, Advocate.
12. Mr. Swami Dayal, Advocate.
13. Mr. S. K. Dhaon, Advocate.

Officials Attached

1. Sri S. D. Dixit.
2. Sri Ram Chandra, Librarian.

Exhibition

- | | |
|--|-------------------------------------|
| 1. Hon'ble Mr. Justice S. N. Katju
(<i>Convener</i>). | 6. Mr. Amitav Banerjee, Advocate. |
| 2. Hon'ble Mr. Justice Mahesh
Chandra. | 7. Pt. N. D. Ojha, Advocate. |
| 3. Hon'ble Mr. Justice D. D. Seth. | 8. Mrs. R. D. Gupta, Advocate. |
| 4. Hon'ble Mr. Justice Yashoda-
nandan. | 9. Mr. Prabodh Gaur, Advocate. |
| 5. Mr. Satyendra Nath Verma, Advo-
cate. | 10. Mr. Keshav Sahai, Advocate. |
| | 11. Mr. P. N. Misra, Advocate. |
| | 12. Mr. K. C. Agarwal, Advocate. |
| | 13. Mr. Om Prakash Gupta, Advocate. |

Officer Attached

Mr. K. L. Chaudhry, Deputy Registrar.

Official Attached

Mr. Rais Ahmad.

Cultural Programmes

- | | |
|--|------------------------------------|
| 1. Hon'ble Mr. Justice K. B. Asthana
(<i>Convener</i>). | 5. Mr. Hari Swarup, Advocate. |
| 2. Hon'ble Mr. Justice G. C. Mathur. | 6. Mr. Swami Dayal, Advocate. |
| 3. Hon'ble Mr. Justice Satish Chandra. | 7. Dr. R. Dwivedi, Advocate. |
| 4. Hon'ble Mr. Justice H. C. P. Tri-
pathi. | 8. Mr. Narendra Kumar, Advocate. |
| | 9. Mr. Kedar Nath Sinha, Advocate. |
| | 10. Miss N. A. Rahman, Advocate. |

Officer Attached

Mr. M. P. Tandon, Deputy Registrar.

LUCKNOW

- | | |
|---|---|
| 1. Hon'ble Mr. Justice B. Nigam
(<i>Convener</i>). | 8. Sri H. D. Srivastava, Advocate. |
| 2. Hon'ble Mr. Justice R. A. Misra. | 9. Sri S. D. Misra, Advocate. |
| 3. Hon'ble Mr. Justice L. P. Nigam. | 10. Sri S. C. Das, Advocate. |
| 4. Hon'ble Mr. Justice Uma Shankar
Srivastava. | 11. Sri J. S. Trivedi, Advocate. |
| 5. Hon'ble Mr. Justice R. N. Sharma. | 12. Sri Syed Mohammad Husain, Advo-
cate. |
| 6. Hon'ble Mr. Justice Rameshwar
Chandra. | 13. Sri Balram Krishna Mathur, Advo-
cate. |
| 7. Sri H. K. Ghose, Advocate. | 14. Sri Murli Manohar Lal, Advocate. |

Officer Attached

Sri Virendra Kumar, Deputy Registrar.

Pandal and Seating

- | | |
|--|--------------------------------------|
| 1. Hon'ble Mr. Justice Bishambhar Dayal (<i>Convener</i>). | 6. Mr. Krishna Sahai, Advocate. |
| 2. Hon'ble Mr. Justice T. Ramabhadran. | 7. Mr. Hriday Nath Seth, Advocate. |
| 3. Hon'ble Mr. Justice H. C. P. Tripathi. | 8. Mr. Vijay Kumar Burman, Advocate. |
| 4. Hon'ble Mr. Justice S. D. Khare. | 9. Mr. H. P. Dubey, Advocate. |
| 5. Hon'ble Mr. Justice S. N. Singh. | 10. Mr. Ganesh Prasad, Advocate. |

Officers Attached

- | | |
|--|---|
| 1. Mr. M. L. Agarwal, Joint Registrar. | 2. Mr. S. N. Srivastava, Assistant Registrar. |
|--|---|

Building Decoration

- | | |
|---|---|
| 1. Hon'ble Mr. Justice Bishambhar Dayal. | 6. Mr. K. B. L. Gaur, Advocate. |
| 2. Hon'ble Mr. Justice J. N. Takru (<i>Convener</i>). | 7. Mr. S. K. Dhaon, Advocate. |
| 3. Hon'ble Mr. Justice Gyanendra Kumar. | 8. Mr. Janardan Swarup Gupta, Advocate. |
| 4. Mr. K. N. Seth, Advocate. | 9. Mr. Tribeni Shanker, Advocate, Civil Courts, Varanasi. |
| 5. Mr. Yudhisthira, Advocate. | 10. Mr. Jayanti Prasad, Advocate, Civil Courts, Meerut. |

Officer Attached

Mr. S. K. P. Joshi, Deputy Registrar.

At Home and Entertainment

- | | |
|---|---------------------------------------|
| 1. Hon'ble Mr. Justice V. G. Oak (<i>Convener</i>). | 6. Pt. Tej Narain Sapru, Advocate. |
| 2. Hon'ble Mr. Justice S. K. Verma. | 7. Pt. Shri Shanker Tiwari, Advocate. |
| 3. Hon'ble Mr. Justice S. C. Manchanda. | 8. Mr. Lalji Sinha, Advocate. |
| 4. Hon'ble Mr. Justice S. N. Katju. | 9. Mr. G. N. Verma, Advocate. |
| 5. Pt. P. C. Chaturvedi, Advocate. | 10. Mr. Shamshuddin, Advocate. |
| | 11. Mr. R. N. Mulla, Advocate. |
| | 12. Mr. Ganesh Prasad, Advocate. |

Officer Attached

Mr. A. N. Kapoor, Deputy Registrar.

Official Attached

Mr. K. P. Mehta, Superintendent, Administrative Department.

Incharge Guests in High Court Building

- | | |
|--|---|
| 1. Hon'ble Mr. Justice D. P. Uniyal
(Convener). | 7. Mr. J. K. Srivastava, Advocate. |
| 2. Hon'ble Mr. Justice G. C. Mathur. | 8. Mr. V. P. Tewari, Advocate. |
| 3. Hon'ble Mr. Justice Hamidullah Beg. | 9. Mr. C. S. P. Singh, Advocate. |
| 4. Hon'ble Mr. Justice Rajeshwari Prasad. | 10. Mr. Gur Dayal Srivastava, Advocate. |
| 5. Mr. Shambhu Prasad, Advocate. | 11. Mr. Pravin Chaturvedi, Advocate. |
| 6. Mr. Shanti Bhushan, Advocate. | 12. Mr. B. N. Katju, Advocate. |
| | 13. Mr. D. N. Sanyal, Advocate. |

Officer Attached

Mr. C. P. Srivastava, Deputy Registrar.

Celebrations in the Mofussil Centres

- | | |
|--|--|
| 1. Hon'ble Mr. Justice D. S. Mathur
(Convener). | 4. Mr. Baleshwari Prasad, Advocate. |
| 2. Hon'ble Mr. Justice C. B. Capoor. | 5. Mr. Shanti Swaroop Bhatnagar, Advocate. |
| 3. Hon'ble Mr. Justice G. D. Sahgal. | 6. Dr. Rishi Ram Mishra, Advocate. |

Officer Attached

Mr. M. P. Tandon, Deputy Registrar.

Cricket Match

- | | |
|---|---|
| 1. Hon'ble Mr. Nasirullah Beg, Chief Justice. | 8. Sri P. N. Katju, Advocate. |
| 2. Hon'ble Mr. Justice S. N. Katju. | 9. Sri I. A. Abbasi, Advocate, Lucknow. |
| 3. Hon'ble Mr. Justice Hamidullah Beg (Convener). | 10. Sri S. L. Suri, Advocate, Lucknow. |
| 4. Sri K. L. Misra, Advocate-General. | 11. Sri B. N. Sapru, Advocate. |
| 5. Sri Laxmi Saran, Advocate. | 12. Sri T. N. Sapru, Advocate. |
| 6. Sri Amitav Banerji, Advocate. | 13. Sri K. B. L. Gaur, Advocate. |
| 7. Sri A. N. Verma, Advocate. | 14. Sri L. P. Naithani, Advocate. |
| | 15. Sri V. K. Burman, Advocate. |

Officer Attached

Sri S. Abel, Assistant Registrar.

Officials Attached

1. Sri Rais Ahmad.
2. Sri J. P. Dube.
3. Sri D. S. Dube.

The entire work for holding the Centenary Celebrations involved a fairly heavy task in which the Government of India, the State Government, Judges, Members of the Bar, and the Staff of the Court have fully co-operated.





THE HON'BLE MR. NASIRULLAH BEG, CHIEF JUSTICE AND CHAIRMAN PLANNING COMMITTEE

MEMBERS OF THE



THE HON'BLE MR. NASIRULLAH
BEG, CHIEF JUSTICE



THE HON'BLE MR. JUSTICE
V. G. OAK



SRI K. L. MISRA, ADVOCATE
GENERAL



PT. GOPI NATH KUNZRU,
ADVOCATE, HIGH COURT,
ALLAHABAD



SRI S. N. MISRA, ADVOCATE,
HIGH COURT, ALLAHABAD



SRI B. B. MISRA, REGISTRAR,
HIGH COURT

PLANNING COMMITTEE



THE HON'BLE MR. JUSTICE
JAGDISH SAHAI



THE HON'BLE MR. JUSTICE
S. N. KAIFU



SRI GANESH PRASAD, ADVOCATE,
HIGH COURT, ALLAHABAD



SRI HAR GOVIND DAYAL
SRIVASTAVA, ADVOCATE,
HIGH COURT, LUCKNOW



SRI JAI SHANKER TRIVEDI,
ADVOCATE HIGH COURT,
LUCKNOW BENCH, LUCKNOW

SRI K. L. CHAUDHRY, DEPUTY
REGISTRAR, HIGH COURT,
ALLAHABAD



MEMBERS OF COMMEMORATION VOLUME
COMMITTEE



HON'BLE MR. JUSTICE
SAHAI, ADMINISTRATIVE
JUDGE (CONVENER)



THE HON'BLE MR. JUSTICE
S. N. DWIVEDI



THE HON'BLE MR. JUSTICE
GYANENDRA KUMAR (CONVENER)



MR. H. K. GHOSH, BAR-AT-LAW
PRESIDENT, AVADH BAR ASSOCIATION



MR. K. L. MISRA
ADVOCATE GENERAL, U. P.



MR. GOPAL BEHARI, ADVOCATE



MR. S. N. VERMA, ADVOCATE



MR. N. D. OJHA, ADVOCATE



MR. AMILAV BANERJI, ADVOCATE



MR. GUR DAYAL SRIVASTAVA,
ADVOCATE



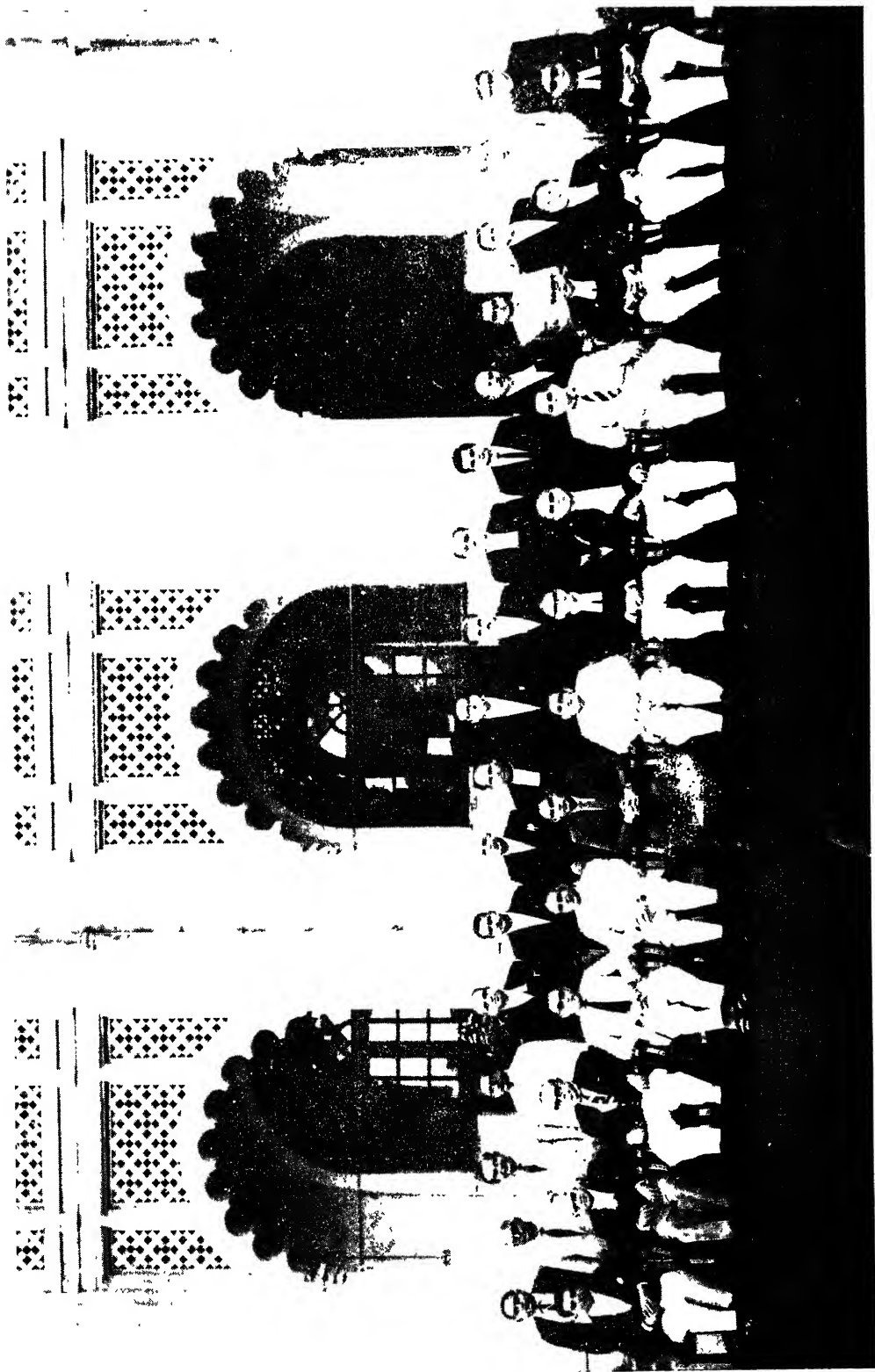
MR. M. N. SHUKLA, ADVOCATE



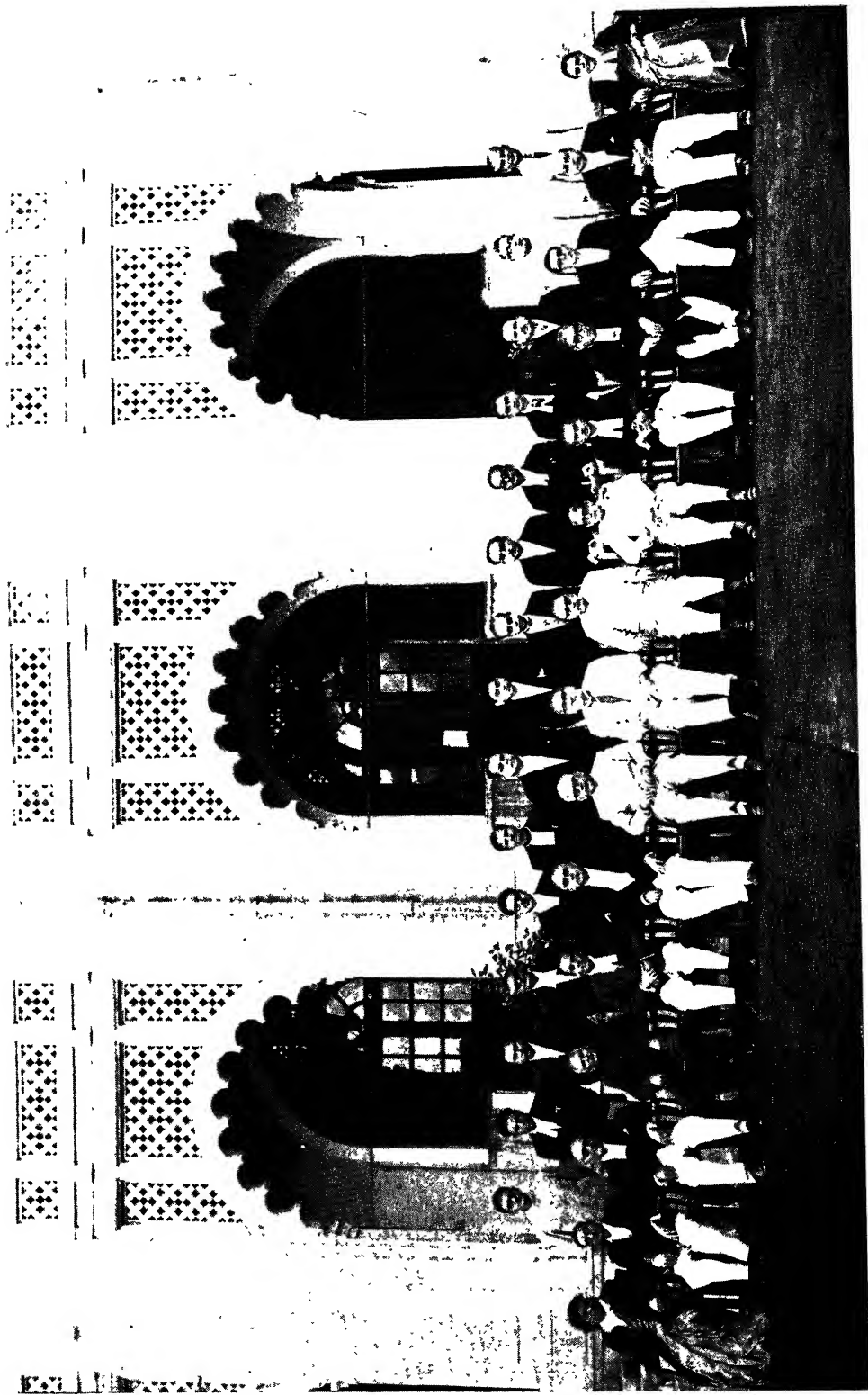
MR. HARIHAR PRASAD
ADVOCATE



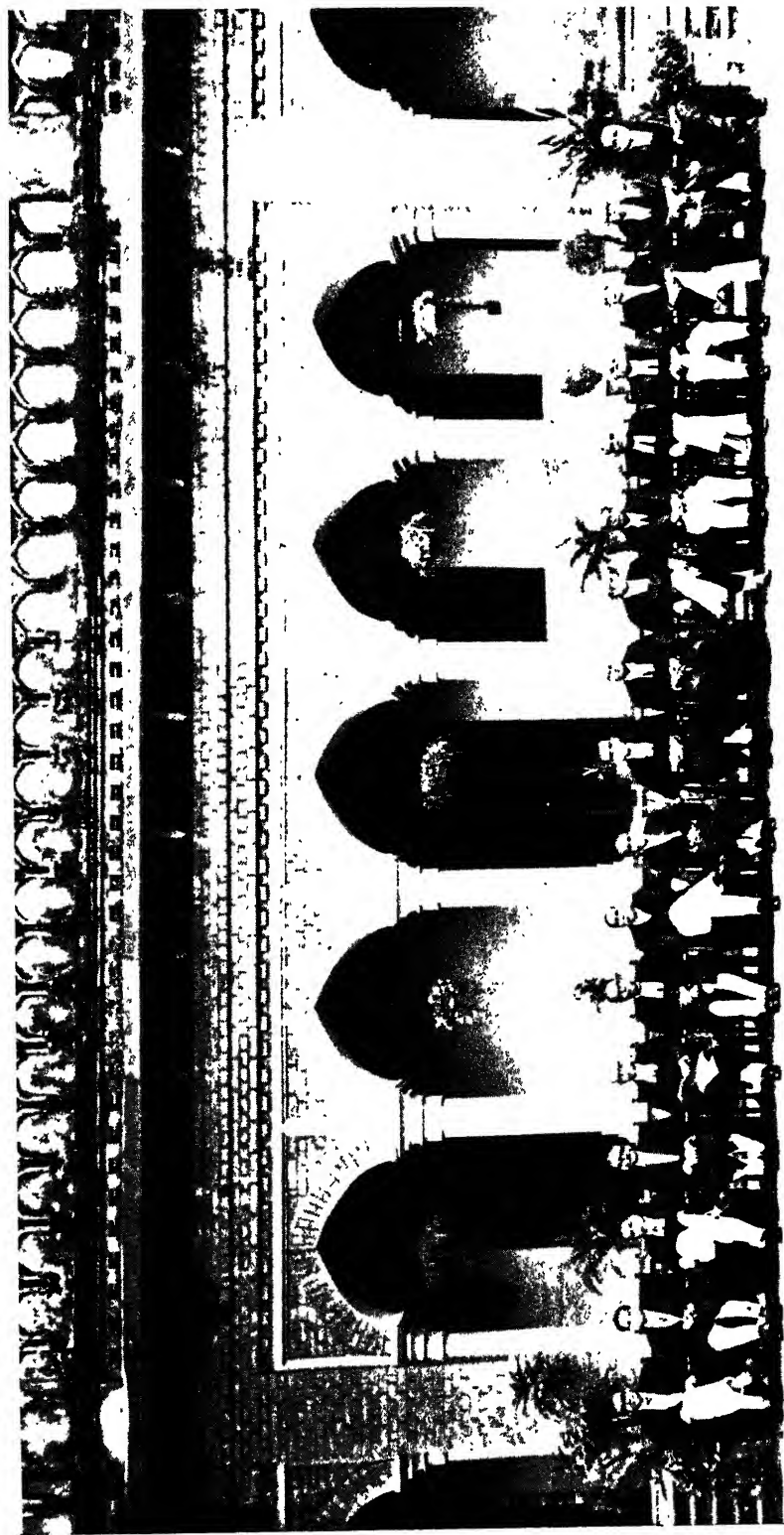
MR. K. L. CHAUDHRY,
DEPUTY REGISTRAR
(ATTACHED TO COMMITTEE)



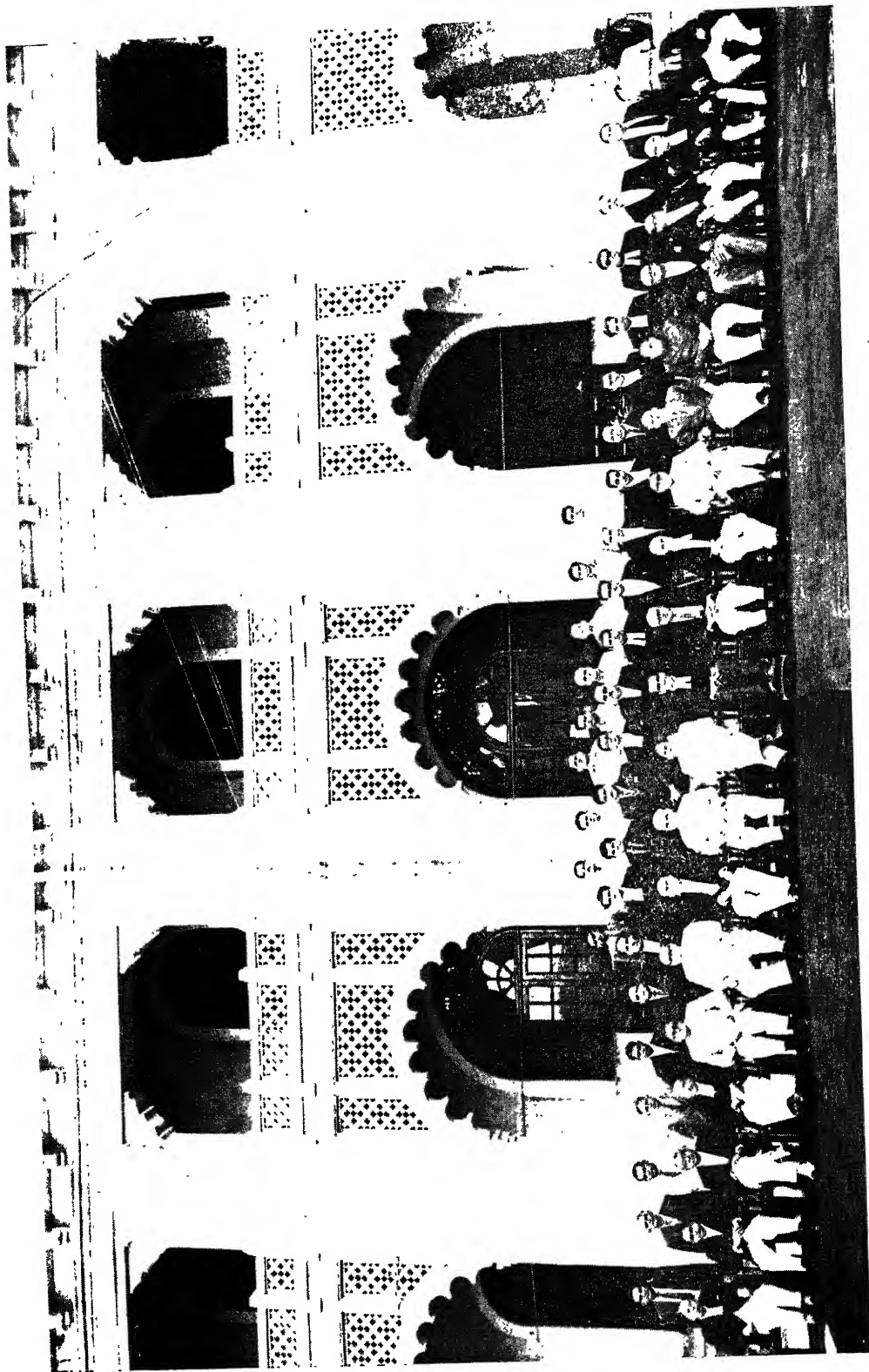
MEMBERS OF SUB-COMMITTEES, CENTENARY CELEBRATIONS, HIGH COURT, ALAHABAD



MEMBERS OF SUB-COMMITTEES, CENTENARY CELEBRATIONS, HIGH COURT, ALLAHABAD



MEMBERS OF SUB-COMMITTEE, CENTENARY CELEBRATIONS, HIGH COURT, LUCKNOW BENCH




MEMBERS OF SUB-COMMITTEES, CENTENARY CELEBRATIONS, HIGH COURT, ALLAHABAD

■

INTRODUCTORY NOTE

on the

High Court of Judicature at Allahabad

 THE High Court of Judicature at Allahabad is the fourth oldest and the last Chartered High Court in India, created under the Indian High Courts Act, or the Charter Act, 1861 (24 & 25 Vict. C. 104)*, s. 16. When the British acquired the areas, which, from 1835, came to be known as the North-Western Provinces of the Presidency of Fort William in Bengal, the administration of justice in these areas came under the jurisdiction of the Supreme Court of Judicature at Fort William and the Courts of Sadar Dewani Adalat and Sadar Nizamat Adalat of the Presidency of Bengal. However, a separate Sadar Dewani Adalat and Sadar Nizamat Adalat were established for the North-Western Provinces on January 1, 1832.

* Repealed by the Government of India Act, 1915 (5 & 6 Geo. V. C. 61), s. 130.

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In 1856, Oudh came under British *suzerainty* and a Judicial Commissioner's Court was created at the apex of the judicial set-up in that province. By the Letters Patent issued on the 14th of May, 1862 by Her Majesty Queen Victoria, the High Court of Judicature at Fort William in Bengal was constituted ; and temporarily the North-Western Provinces also, came under the jurisdiction of that High Court for certain purposes. A separate High Court of Judicature for the North-Western Provinces was constituted at Agra by Letters Patent of Her Majesty, dated the 17th of March, 1866 ; but Oudh continued to remain under the Judicial Commissioner as before.

In 1902, Oudh and the North-Western Provinces were merged in one Province, known as the United Provinces of Agra and Oudh, but the judicial administration remained separate. The High Court of Judicature for the North-Western Provinces sat at Agra from 1866 to 1868 and thereafter at Allahabad. On being moved to Allahabad in 1869, the High Court was located in a building on the Sarojini Naidu Marg (Queen's Road) near the buildings in which the U. P. Secretariat, Board of Revenue and other offices of Government were situate. On the 18th of March, 1911, Sir John Stanley, K.C., the then Chief Justice laid the foundation-stone of the present High Court building, which was opened by His Excellency Lord Chelmsford, Viceroy and Governor-General of India, on the 27th of November, 1916, during the Chief Justiceship of Sir Henry Richards, K.C. The two courts—the Oudh Chief Court, which replaced the Judicial Commissioner's Court in 1925, and the Allahabad High Court—were amalgamated on the 26th of July, 1948 ; and later a new wing was added to the High Court building, the opening ceremony of which was performed by the President Dr. Rajendra Prasad on 21st February, 1954.

When the High Court formally replaced the Sadar Diwani Adalat on the 13th of June, 1866, the Judges quietly walked in and took

their seats as if leaving the ceremonies for posterity. The Court made a modest beginning with six Judges, including the Chief Justice, Sir Walter Morgan. The number of Civil Appeals before the High Court then was 3,112. In 1915 it rose to 4,646. Criminal cases were 1,001 in number in 1866 and the figure rose to 4,271 by 1915. The number of Subordinate Courts under the supervision of the Court, which was 350 in 1866, increased to 1,276 by 1915. At the time of move to Allahabad, the number of Advocates on the roll of the High Court was six. There was also the Vakils' Bar consisting of 'Urdu-speaking' Vakils of the earlier Court led by Maulvi Haider Husain, grandfather of Sir Nawab Mohammad Yusuf of Jaunpur.

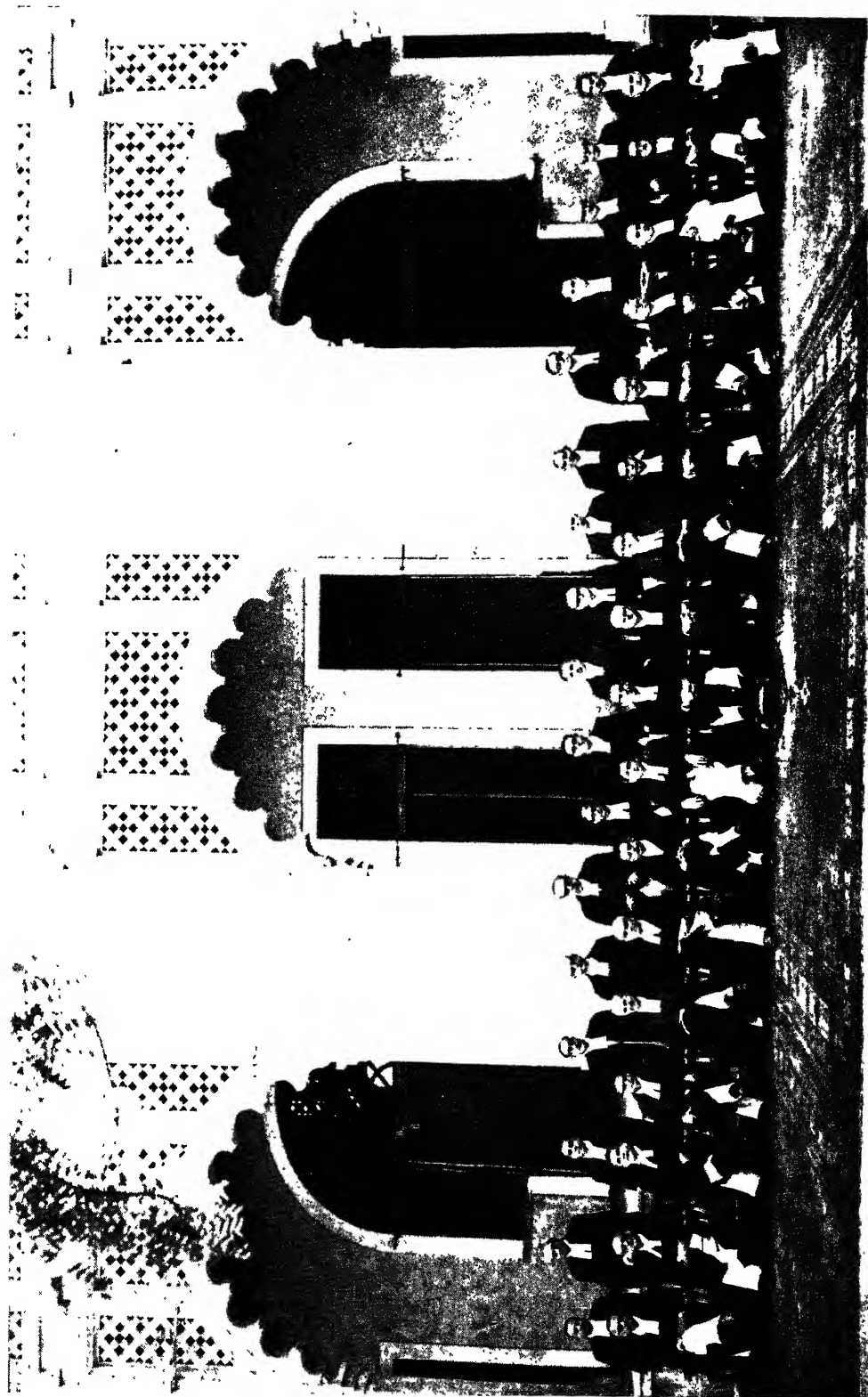
As years rolled by, the volume of work considerably increased ; and with the advent of the new Constitution followed by the reorganisation of the States, this Court today occupies the position of the biggest High Court in India—as the Highest Court in a State with a population of 7,37,90,000 sharing with the Supreme Court and the sister Courts the duty of enforcing the Rule of Law. The present strength of Judges is now 38 (including 14 Additional Judges) as against 6 of the year 1866. There are now 404 Subordinate Courts spread throughout the State under the supervision of the High Court and the number of Advocates on roll has gone up to 10,546. The spacious and commodious building is now found to be inadequate for the growing needs of the Court and it is proposed to add more court rooms, chambers and office rooms to the present Court building. The Court has had a glorious past with a galaxy of eminent Judges who acquired lasting fame in the judicial field, such as Morgan, Stanley, Mahmud, Edge, Henry Richards, Lindsay, P. C. Banerji, Sulaiman, Lal Gopal Mukerji and many others.

Judges from this Court have from time to time gone to the Privy Council, Federal Court and the Supreme Court of India and

adorned the Chair of the Chief Justice in different High Courts. The Bar of this Court justly occupies a place of pride. Eminent lawyers, like Pt. Ajodhya Nath, Sir Sunder Lal, Pt. Moti Lal, Sir Tej Bahadur Sapru, whose names are enshrined in the annals of our country, practised for several years in this Court and made valuable contributions not only in legal sphere but also in other walks of life. The first Prime Minister of the country was also for 7 years a member of the Bar of this Court. All of them helped in building up the traditions which can be the proud possession of any Court. Dr. Kailas Nath Katju and Dr. N. P. Asthana are members of that galaxy who are fortunately still amongst us. The subordinate Judiciary controlled by this Court is held in high esteem and helps to keep the balance of justice even. Despite the stress and strain of times the staff of the Court is devoted to work and has played its part well.

Now that the Court has completed a century of its existence it can recall the past with a feeling of satisfaction and pride and look ahead with hopes of a brighter future.





JUDGES OF THE HIGH COURT, ALLAHABAD, 1966



JUDGES OF THE HIGH COURT ALLAHABAD (LUCKNOW BENCH)
(1966)

■

PHOTOGRAPHS OF THE HON'BLE CHIEF JUSTICES
(1866—1966)

■



Top—Left to right

THE HON'BLE SIR WALTER MORGAN
(1866—1871)

THE HON'BLE SIR ROBERT STUART
(1871—1884)

THE HON'BLE SIR WILLIAM COMER PETHERAM
(1884—1886)



THE HON'BLE SIR JOHN EDGE
(1886-1898)



THE HON'BLE
SIR LOUIS ADDIN KERSHAW
(1898)



THE HON'BLE
SIR ARTHUR STRACHEY
(1898—1901)



Top—Left to right

THE HON'BLE SIR JOHN STANLEY
(1901—1911)

THE HON'BLE SIR HENRY RICHARDS
(1911—1919)

THE HON'BLE SIR EDWARD GRIMWOOD MEARS
(1919—1932)



THE HON'BLE
SIR SHAH MOHAMMAD SULAIMAN
(1932—1937)



THE HON'BLE
SIR IQBAL AHMAD
(1941—1946)

THE HON'BLE
SIR JOHN GIBB THOM
(1937—1941)





THE HON'BLE
MR. KAMALAKANIA VERMA
(1946—1947)



THE HON'BLE
MR. BIDHU BHUSHAN MALIK
(1947—1955)



THE HON'BLE SIR O. H. MOOTHAM
(1955—1961)

BOTTOM—Left to right

THE HON'BLE MR. MANULAL CHUNILAL DESAI
(1961—1966)

THE HON'BLE MR. VASHISHTHA BHARGAVA
(February to August, 1966)

THE HON'BLE MR. NASIRULLAH BEG
(August, 1966—)



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PHOTOGRAPHS OF THE HON'BLE JUDGES
(1866—1966)

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THE HON'BLE
MR. JUSTICE ALEXANDER ROSS
(1866—1871)



THE HON'BLE
MR. JUSTICE WILLIAM EDWARDS
(1866—1867)



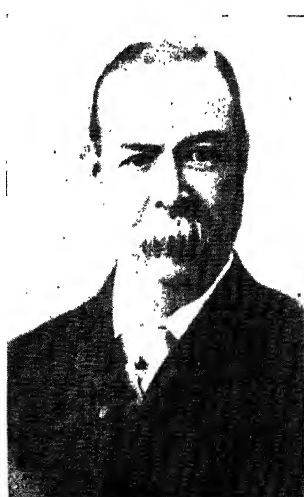
THE HON'BLE MR. JUSTICE DOUGLAS STRAIGHT
(1879—1892)

BOTTOM—Left to right

THE HON'BLE MR. JUSTICE MAYNARD
BRODHURST (1881—1890)

THE HON'BLE MR. JUSTICE WILLIAM TYRELL
(1881—1894)

THE HON'BLE MR. JUSTICE WILLIAM DUTHOIT
(1881)





THE HON'BLE
MR. JUSTICE SYED MAHMOOD
(1887—1893)



THE HON'BLE
SIR RICHARD CHARLES
OLDFIELD (1882—1887)



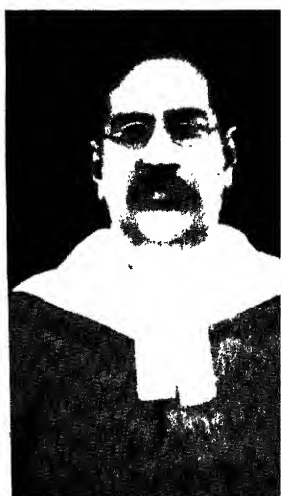
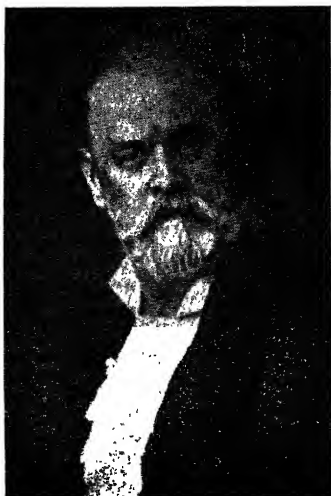
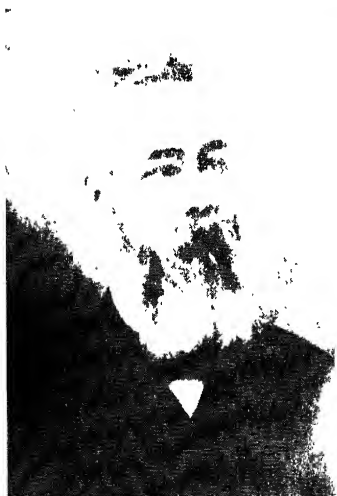
THE HON'BLE
SIR GEORGE EDWARD
KNOX (1890—1921)

BOTTOM—Left to right

THE HON'BLE MR. JUSTICE WILLIAM YOUNG
(1890)

THE HON'BLE MR. JUSTICE HARRISON FALKNER
BLAIR (1892—1905)

THE HON'BLE SIR PRAMODA CHARAN BANNERJI
(1893—1923)





Top—Left to right

THE HON'BLE SIR WILLIAM ROBERT
BURKITT (1895—1908)

THE HON'BLE MR. JUSTICE WILLIAM
BLANNERHASSETT (1896-1897)

THE HON'BLE SIR ROBERT SMITH
AIKMAN (1896—1909)



THE HON'BLE MR. JUSTICE CURSETJEE
RUSTOMJEE (1906)



THE HON'BLE
SIR HENRY DALY GRIFFIN
(1908—1914)



THE HON'BLE
MR. JUSTICE SYED KARAMAT HUSAIN
(1908—1912)



TOP—Left to right

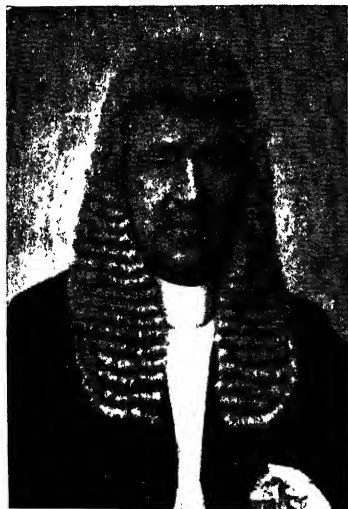
THE HON'BLE SIR CHARLES ROSS
ALSTON (1909)

THE HON'BLE SIR WILLIAM TUDBALL
(1909—1922)

THE HON'BLE SIR EDWARD MAYNARD DES
CHAMIER (1910—1915)



THE HON'BLE
MR. JUSTICE SYED MOHD. RAFIQ
(1912—1923)



THE HON'BLE
MR. JUSTICE HENRY WARD LYLE
(1913)



THE HON'BLE
MR. JUSTICE THEODORE CARO
PIGGOTT (1914—1925)



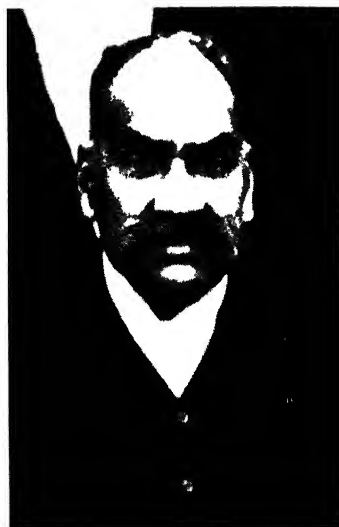
THE HON'BLE SIR SUNDER LALL
(1916)

MIDDLE—*Left to right*

THE HON'BLE SIR CECIL HENRY
WALSH (1916—1928)

THE HON'BLE MR. JUSTICE ALFRED EDWARD
RYVES (1920—1925)

THE HON'BLE SIR S. ABDUR RAUF
(1918)



THE HON'BLE
MR. JUSTICE BENJAMIN LINDSAY
(1921—1928)



THE HON'BLE
MR. JUSTICE WILLIAM WALLACH
(1921)

THE HON'BLE MR. JUSTICE GOKUL PRASAD
(1921—1924)



MIDDLE—*Left to right*

THE HON'BLE SIR LOUIS STUART
(1922—1928)

THE HON'BLE MR. JUSTICE EVERARD REGINALD
NEAVE (1924)

THE HON'BLE MR. JUSTICE KANHAIYA LAL
(1924—1926)



THE HON'BLE
SIR BARJOR JAMSHEDJEE
DALAL (1925—1931)

THE HON'BLE
MR. JUSTICE SIDNEY REGINALD
DANIELS (1925—1928)





THE HON'BLE
SIR LAL GOPAL MUKERJI
(1926—1934)



THE HON'BLE
MR. JUSTICE GUY PONSONBY BOYS
(1926—1932)

THE HON'BLE
MR. JUSTICE LALIT MOHAN BANNERJI
(1926—1932)



BOTTOM—Left to right

THE HON'BLE MR. JUSTICE ERNEST HORATIO
ASHWORTH (1926—1929)

THE HON'BLE MR. JUSTICE SURENDRA NATH SEN
(1927—1932)

THE HON'BLE MR. JUSTICE JOHN CHARLES WEIR
(1928)





THE HON'BLE
MR. JUSTICE CARLETON MOSS KING
(1929—1934)



THE HON'BLE
SIR CHARLES HENRY BAYLEY
KENDALL (1929—1935)



THE HON'BLE SIR JOHN DOUGLAS
YOUNG (1929—1934)

BOTTOM—Left to right

THE HON'BLE MR. JUSTICE AYRTON
GEORGE POPPLEWELL PULLAN (1931—1933)

THE HON'BLE MR. JUSTICE CHAUDHARI
NIAMAT ULLAH (1932—1937)

THE HON'BLE SIR EDWARD
BENNET (1932—1940)





Top—Left to right

THE HON'BLE MR. JUSTICE BARTHOLD
SCHLESINGER KISCH (1934-1935)

THE HON'BLE MR. JUSTICE RACHPAL SINGH
(1934-1940)

THE HON'BLE SIR ARTHUR
TREVOR HARRIES (1934-1938)



THE HON'BLE
SIR HAROLD JAMES COLLISTER
(1935-1944)



THE HON'BLE
MR. JUSTICE HAROLD GORDON SMITH
(1935-1936)



THE HON'BLE
SIR JAMES JOSEPH WHITTLESEA
ALLSOP (1935-1947)



Top—Left to right

THE HON'BLE MR. JUSTICE UMA SHANKER
BAJPAI (1937—1943)

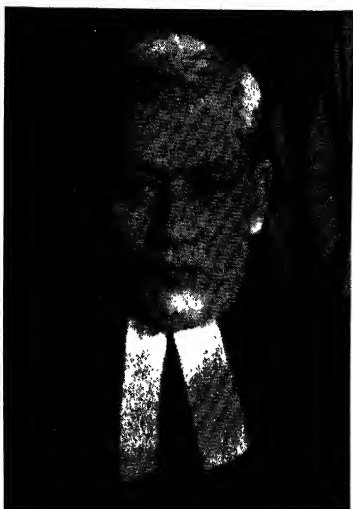
THE HON'BLE MR. JUSTICE GANGA NATH
(1937—1942)

THE HON'BLE MR. JUSTICE MOHAMMAD ISMAIL
(1937—1944)

THE HON'BLE
MR. JUSTICE TIKI RAM MISRA
(1938)



THE HON'BLE
SIR HENRY BENEDICT
LINTHWAITE BRAUND (1939—1947)



THE HON'BLE
MR. JUSTICE TEJ NARAIN MULLA
(1940—1947)





THE HON'BLE
MR. JUSTICE ARCHIBALD HENRY DE BURGH
HAMILTON (1940—1946)



THE HON'BLE
MR. JUSTICE SHYAM KRISHNA DAR
(1940—1944)

THE HON'BLE
MR. JUSTICE ROBERT LANGDON YORKE
(1942—1947)



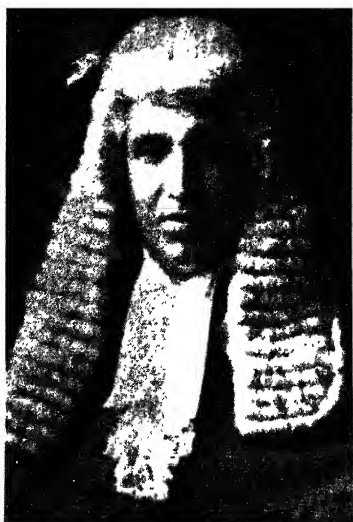
BOTTOM—Left to right

THE HON'BLE MR. JUSTICE PHILIP PETER
MEREDYTH CHICHELF PLOWDEN
(1942—1944)

THE HON'BLE
MR. JUSTICE GIRISH PRASAD MATHUR
(1942—1947)

THE HON'BLE
MR. JUSTICE JOHN REGINALD WILLIAM BENNETT
(1944—1947)





THE HON'BLE
MR. JUSTICE MOHAMMAD WAIJULLAH
(1911—1952)



THE HON'BLE
MR. JUSTICE SHFO PRASAD SINHA
(1944—1949)



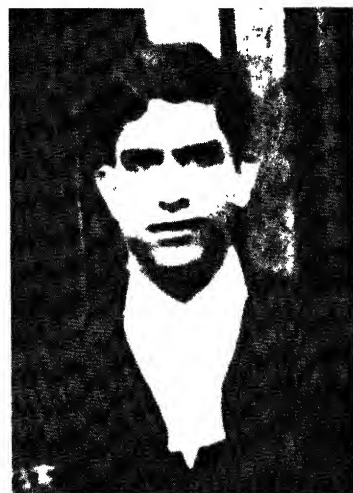
THE HON'BLE
MR. JUSTICE GOPAL SWARUP PATHAK
(1945-1946)

BOTTOM—Left to right

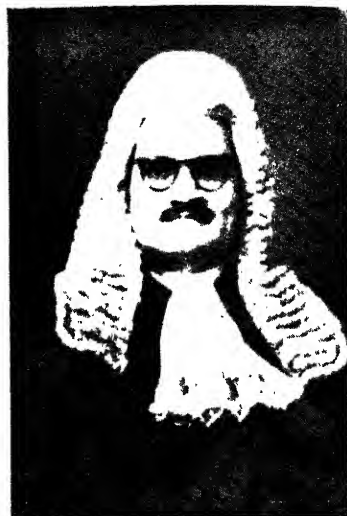
THE HON'BLE MR. JUSTICE MANSUR ALAM
(1946)

THE HON'BLE MR. JUSTICE SANKAR SARAN
(1946—1953)

THE HON'BLE MR. JUSTICE RAGHUBAR DAYAL
(1946—1960)



THE HON'BLE MR. JUSTICE HARISH CHANDRA
(1947—1954)



MIDDLE—Left to right

THE HON'BLE MR. JUSTICE AKBAR HUSAIN
(1947)

THE HON'BLE MR. JUSTICE PRAKASH NARAIN
SAPRU (1947—1954)

THE HON'BLE MR. JUSTICE KAILASH NATH
WANCHOO (1947—1950)



THE HON'BLE
MR. JUSTICE BIND BASNI PRASAD
(1947—1953)

THE HON'BLE
MR. JUSTICE GHULAM HASAN
(1948—1951)





THE HON'BLE MR. JUSTICE LAKSHMI SHANKAR
MISRA (1948—1952)

MIDDLE—Left to right

THE HON'BLE MR. JUSTICE PRADUMAN KISHAN
KAUL (1948—1950)

THE HON'BLE MR. JUSTICE MUBASHIR HUSAIN
KIDWAI (1948—1957)

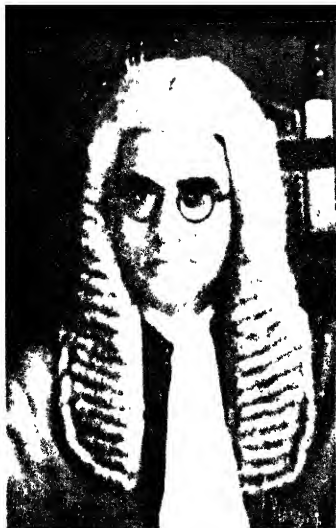
THE HON'BLE MR. JUSTICE SANIDAS BULCHAND
CHANDIRAMANI (1948—1952)



THE HON'BLE
MR. JUSTICE SHAMBU NATH SETHI
(1948—1951)



THE HON'BLE
MR. JUSTICE CHANDRA BHAN
AGARWAL (1948—1957)



Top—Left to right

THE HON'BLE MR. JUSTICE PIARELAL BHARGAVA
(1948—1953)

THE HON'BLE MR. JUSTICE MUSHTAQ AHMAD
(1948—1958)

THE HON'BLE MR. JUSTICE BRIJ MOHAN LALL
(1950—1956)



THE HON'BLE MR. JUSTICE RAM NARAIN GURTU
(1951—1961)



THE HON'BLE
MR. JUSTICE BASUDEVA MUKERJI
(1952—1962)



THE HON'BLE
MR. JUSTICE MISRI LAL CHATURVEDI
(1952—1959)



Top—Left to right

THE HON'BLE MR. JUSTICE HARI SHANKER
CHATURVEDI (1952—1957)

THE HON'BLE MR. JUSTICE ATMA CHARAN
(1952—1954)

THE HON'BLE MR. JUSTICE RANDHIR SINGH
(1953—1958)



THE HON'BLE
MR. JUSTICE HARNATH PRASAD
ASTHANA (1953—1958)



THE HON'BLE
MR. JUSTICE DWIJENDRA NATH ROY
(1953—1960)



THE HON'BLE
MR. JUSTICE GOPALJI MEHROTRA
(1954—1957)



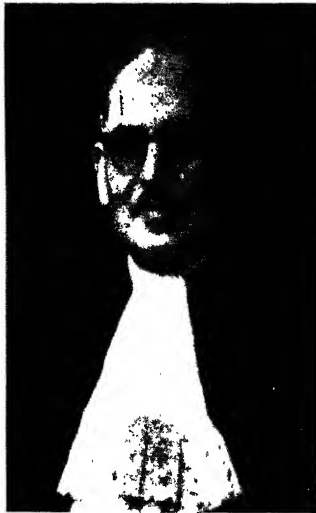
THE HON'BLE
MR. JUSTICE BASIL REGINALD JAMES
(1954—1960)

MIDDLE—Left to right

THE HON'BLE MR. JUSTICE ANAND NARAIN
MULLA (1954—1961)

THE HON'BLE MR. JUSTICE RADHA KRISHNA
CHOWDHRY (1954—1958)

THE HON'BLE MR. JUSTICE SRI NARAIN SAHAI
(1954—1961)



THE HON'BLE
MR. JUSTICE VISHNU DATTA BHARGAVA
(1955—1961)

THE HON'BLE
MR. JUSTICE BALRAM UPADHYA
(1955—1961)



THE HON'BLE
MR. JUSTICE VIDYADHAR GOVIND OAK
(1955—)



MIDDLE—Left to right

THE HON'BLE MR. JUSTICE AMBIKA PRASAD
SRIVASTAVA (1956—1963)

THE HON'BLE MR. JUSTICE JAGBANS KISHORE
TANDON (1956—1961)

THE HON'BLE MR. JUSTICE JAGDISH SAHAI
(1957—)



THE HON'BLE
MR. JUSTICE BISHAMBHAR DAYAL
(1957—)



THE HON'BLE
MR. JUSTICE JAWAHAR NATH TARKU
(1957—)



THE HON'BLE
MR. JUSTICE BISHAN NARAIN NIGAM
(1957—)



MIDDLE—*Left to right*

THE HON'BLE MR. JUSTICE SHANTI SWARUP
DHAVAN (1958—)

THE HON'BLE MR. JUSTICE SHASHI KANTA VERMA
(1958—)

THE HON'BLE MR. JUSTICE WILLIAM BROOME
(1958—)



THE HON'BLE
MR. JUSTICE DHATRI SARAN MATHUR
(1959—)

THE HON'BLE
MR. JUSTICE DEBI PRASAD UNIYAL
(1959—)





THE HON'BLE
MR. JUSTICE SURENDRA NARAYAN
DWIVEDI (1959—)

MIDDLE—*Left to right*

THE HON'BLE MR. JUSTICE RAM ASREY MISRA
(1959—)

THE HON'BLE MR. JUSTICE KAILASH PRASAD
MAHLUR (1960—1963)

THE HON'BLE MR. JUSTICE JHANDU DATTA SHARMA
(1960—1962)



THE HON'BLE
MR. JUSTICE MITHAN LAL
(1960—1963)



THE HON'BLE
MR. JUSTICE SHAMBHU
DAYAL SINGH (1961—1963)



Top—Left to right

THE HON'BLE MR. JUSTICE SHIV CHANDER
MANCHANDA (1961—)

THE HON'BLE MR. JUSTICE TIRUVALYANGUDI
RAMABHADRAN (1961—)

THE HON'BLE MR. JUSTICE BHAGWAN DAS
GUPTA (1961—)

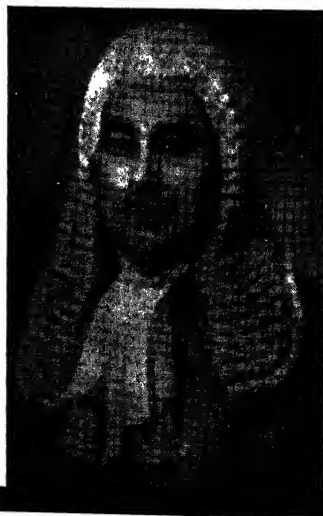


THE HON'BLE MR. JUSTICE BRIJ LAL GUPTA
(1961-1962)



THE HON'BLE
MR. JUSTICE KUNWAR BAHADUR
ASTHANA (1961—)

THE HON'BLE
MR. JUSTICE SHIVA NATH KATJU
(1962—)





Top—Left to right

THE HON'BLE MR. JUSTICE GYANENDRA KUMAR
(1962—)

THE HON'BLE MR. JUSTICE RAGHUNANDAN
SWARUP PATHAK (1962—)

THE HON'BLE MR. JUSTICE DURGESHWAR DAYAL
SETHI (1963—)



THE HON'BLE
MR. JUSTICE MAHESH CHANDRA
(1963—)



THE HON'BLE
MR. JUSTICE MIRZA HAMIDULLAH
BEG (1963—)



THE HON'BLE
MR. JUSTICE RAM NATH SHARMA
(1963—1966)



Top—Left to right

THE HON'BLE MR. JUSTICE GURSARAN DAS
SAHGAL (1963—)

THE HON'BLE MR. JUSTICE SHANKER DAYAL
KHARE (1963—)

THE HON'BLE MR. JUSTICE GYAN CHAND MATHUR
(1963—)



THE HON'BLE
MR. JUSTICE GANGESHWAR PRASAD
(1963—)

Bottom—Left to right

THE HON'BLE MR. JUSTICE CHAND BEHARI
CAPOOR (1963—)

THE HON'BLE MR. JUSTICE SATISH CHANDRA
(1963—)

THE HON'BLE MR. JUSTICE HARISH CHANDRA
PATI TRIPATHI (1963—)





THE HON'BLE MR. JUSTICE LAKSHMI PRASAD
NIGAM (1964—)

MIDDLE—Left to right

THE HON'BLE MR. JUSTICE SURENDRA NARAIN
SINGH (1964—)

THE HON'BLE MR. JUSTICE UMA SHANKER
SRIVASTAVA (1965—)

THE HON'BLE MR. JUSTICE RAJESHWARI PRASAD
(1965—)

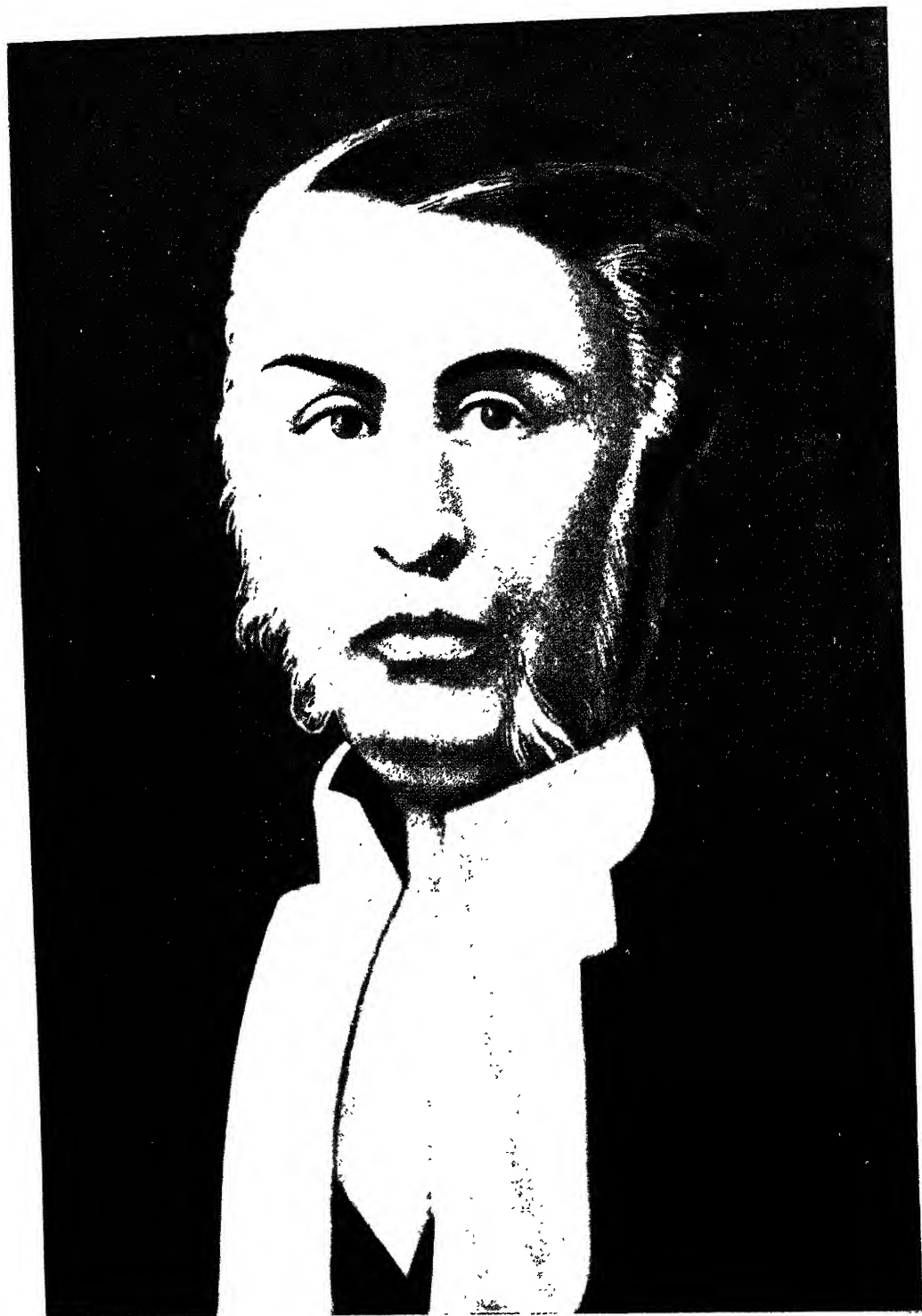


THE HON'BLE
MR. JUSTICE RAMESHWAR
CHANDRA (1965—)

THE HON'BLE
MR. JUSTICE YASHODA
NANDAN (1966—)



Historical



THE HON'BLE SIR WALTER MORGAN
First Chief Justice

■

History of the High Court at Allahabad during the Chief Justiceship of Sir Walter Morgan

(1866—1871)

By

SIR ARCHIBALD HENRY BENEDICT LINTHWAITE BRAUND
Ex-Judge, Allahabad High Court

The Letters Patent of the High Court of
Judicature of the North-Western Provinces
(17th March, 1866)

BY the High Courts Act, 1861, provision was made, not only for the replacement of the Supreme Courts of Calcutta, Madras and Bombay and for the establishment of High Courts in their places, but for the establishment of a High Court by Letters Patent in any other part of Her Majesty's territories not already included in the jurisdiction of another High Court. The Calcutta High Court itself was established, in the place of the Supreme Court, by Letters Patent of the 14th May, 1862. Four years later the High Court of Judicature for the North-Western Provinces came into existence under Letters Patent of the 17th March, 1866, replacing

■

the old Sudder Diwanny Adawlat.* These Letters Patent as subsequently amended, are the Charter of the present High Court of Judicature at Allahabad.

The first Chief Justice and Judges of the New High Court

The first Chief Justice and Judges of the new High Court of the North-Western Provinces were named in its Letters Patent. They were—Sir Walter Morgan, Barrister-at-Law, Chief Justice; Alexander Ross, Bengal Civil Service; William Edwards, Bengal Civil Service; William Roberts, Bengal Civil Service; Francis Boyle Pearson, Bengal Civil Service; and Charles Arthur Turner, Barrister-at-Law, Judges. Of these, the four Bengal Civil Service Judges were the four Judges of the existing Sudder Diwanny Adawlat of the North-Western Provinces. Robert Spankie acted as an officiating Judge from the beginning, until he was made a permanent Judge of the High Court in 1867, in the place of Mr. Justice Edwards.

Sir Walter Morgan

Sir Walter Morgan was born in the year 1821 and was, therefore, forty-five when he became the first Chief Justice of the Court. He was the son of Walter Morgan and was educated at King's College, London. He was called to the Bar by the Middle Temple on the 18th November, 1841: For some years he practised as a conveyancer and "equity draughtsman." He also went on

*The Sudder Diwanny Adawlat had been constituted for the North-Western Provinces under Regulation VI, 1831.

the South Wales Circuit and attended the Glamorganshire Sessions. On the 2nd July, 1852, he was admitted to the Bar of the Supreme Court in Calcutta and in 1854 was appointed clerk of the Legislative Council of India. He served in that capacity until 1859, when he became a Master in equity to the Supreme Court in Calcutta. In 1861 he published, with Mr. A. G. Macpherson,* a book on the Indian Penal Code with Notes. In 1862 Sir Walter Morgan was appointed one of the first Puisne Judges of the new Calcutta High Court, and, in due course, became the first Chief Justice of the North-Western Provinces, as mentioned above, by appointment under the Letters Patent of 1866. He remained Chief Justice of the North-Western Provinces until November, 1871, when he was translated to Madras as Chief Justice of that Court, finally retiring from Madras in 1879. In 1849 Sir Walter Morgan married Ada Maria, the daughter of Mr. D. Harris. She died in 1884. There is, however, no trace of her having been in Allahabad, while Sir Walter Morgan was Chief Justice. Sir Walter Morgan died in London on the 28th October, 1906, at the age of 85. He had one son, also Walter Morgan, who became Deputy Registrar of the Appellate Side of the Madras High Court in 1892.

Mr. Justice Turner

Mr. Justice Turner was the first barrister judge appointed to the new High Court direct from England. He was the son of the Revd. John Fisher Turner and was born at Exeter on the 6th March, 1833. He was educated at Exeter Grammar School and at Exeter College, Oxford, of which he became a fellow in

*Mr. A. G. Macpherson later became one of the first Judges of the Calcutta High Court.

1855. He was called to the Bar by Lincoln's Inn in 1858. He was, therefore, of only eight years standing at the Bar when appointed to the High Court and was only thirty-three years of age. He remained a Judge of this High Court for over twelve years, until in January, 1879 he succeeded his old Chief Justice, Sir Walter Morgan, as Chief Justice of Madras. The new High Court of the North-Western Provinces thus had the distinction of providing two successive Chief Justices of Madras from its original Bench within the first thirteen years of its existence. It is evident from the files of the *Pioneer* that Mr. Justice Turner, being much the youngest of the Judges, took a leading part in the activities of Allahabad outside the Court and, before ceasing to be Chief Justice of Madras in 1885, he had in 1880 become Vice-Chancellor of Madras University. Sir Charles Turner was in 1879, the year he left the Allahabad High Court, a member of the Indian Law Commission, and in 1886 he was a member, with Sir Charles Aitchison, of the Public Service Commission appointed to examine the conditions under which Indians should be admitted to the higher posts of the public service. In 1888 he became a member of the Council of India and retained that office until 1898. He lived in London at No. 62, Ennismore Gardens until he died on the 20th October, 1907 at the age of 74. He was awarded a C. I. E. in January, 1878 and a K. C. I. E. in 1879 on becoming Chief Justice of Madras.

Supersession of the Sudder Diwanny Adawlat
by the High Court on the 11th June, 1866

The actual first appointments of the Chief Justice and Judges of the new High Court dated from the 13th June, 1866, on which day the old Sudder Diwanny Adawlat came to an end.

Though in 1857-58, Lord Canning, at the time of the Indian mutiny, had assumed the government of the North-Western Provinces at Allahabad, where it remained until it moved to Lucknow, the Sudder Diwanny Adawlat still sat in 1866 at the old capital at Agra. Though the Sudder Diwanny Adawlat ceased to exist and the High Court formally replaced it on the 13th June, 1866, it was not for another three years that the transfer of the new High Court to Allahabad was complete. It is a great pity that the first volume of the new Law Reports of the High Court does not contain any reference to the inauguration of the Court. And there are unfortunately no records in the archives of the High Court of the actual transition, except a copy of an official memorial by the Sudder Judges of their thanks presented to the 'Register' (Registrar), Mr. J. Simson, of the Bengal Civil Service, on the 7th June, 1866, "a few days" before the old Court ceased to exist. This was, no doubt, a well earned testimonial, since much of the organization of the change over must have fallen on to the 'Register's' shoulders.

Court first established at Agra

Mr. Simson became the first "Registrar" of the High Court and so remained until he went on leave to Europe in March, 1867. Meanwhile, the Court remained at Agra. Its last reported case was a special appeal (Mashook Alley Khan and others v. Nowl. Decisions, S. D. A. N. W. P. January to May, 1866, p. 159) decided by Mr. W. Roberts* and Mr. F. B. Pearson* on the 31st

* The Judges of the Sudder Diwanny Adawlat were not "Justices," which perhaps accounts for the difficulty which the official services still find in according to Judges of the High Court their proper titles of 'Mr. Justice.'

May, 1866. The first reported case of the new High Court, decided by Mr. Justice Pearson and Mr. Justice Spankie, was heard on the 18th June, 1866. Both were uninteresting. The principal difficulty in the way of the transfer to Allahabad was, it seems, the housing of the new High Court, and its Judges.*

The new High Court building at Allahabad

But the building of the new High Court and of the new government offices, which are those excellent red rectangular two storied buildings still to be seen in Queens Road, was proceeding. The four blocks were designed by Colonel Peile, of the Public Works Department, the two on the west of Queens Road as the Government Secretariat and the Accountant General's office respectively, and those on the east as the High Court and the Board of Revenue. They are said to have cost thirteen lakhs, which by modern standards appears exceedingly cheap. The old 'Gazetteer' of the North-Western Provinces relates that the new High Court was completed about 1870. It, or part of it, was, however, in all probability fit for occupation rather earlier than that as Mr. Justice Pearson and Mr. Justice Turner had by November, 1868 arrived in Allahabad from Agra and were sitting here as a Bench of the new High Court. The Court was, accordingly, in the third year of its existence divided between Agra and Allahabad, the Chief Justice and three Judges sitting at Agra and two Judges at Allahabad. This led to a somewhat bitter leading Article in the

*The four large houses in Hastings Road, Allahabad, which have generally been occupied by Judges of the High Court are believed to have been built about this time and to be copies, on a rather larger scale, of the house occupied by one of the Judges of the Sudder Diwanny Adawlat at Agra, now occupied by the District Judge of Agra.

'Pioneer' of the 23rd November, 1868, complaining of the disadvantage to litigants and lawyers of a divided Court, even suggesting that the Chief Justice might be too comfortably housed at Agra to wish to hasten his move. The house occupied by Sir Walter Morgan at Agra on Drummond Road, near the District Courts, is believed to be the house known as 'Grant's Castle', which still stands and is a palatial house in large grounds now the property of the younger brother of the Raja of Avagarh. The original court-room of the first Chief Justice of the High Court is believed to have been the present court-room of the District Judge of Agra, which is by no means spacious or well lit. Nor, apparently, was the new High Court building at Allahabad itself at first an unqualified success, since its designer had considered that it did not befit the dignity of its appointments to equip it with punkhas. A system, therefore, of pumping air (presumably by hand) from the cellar had been devised, without, it seems, the expected result of cooling the building. It was said at the time by the wits of the Bar that the only thing wrong with the new High Court building was that it was impossible either to hear or see in it. But even so it compared favourably with the new Calcutta High Court which was opened in 1872 and about which even more unpleasant things were said.

The full High Court assembled
at Allahabad late in 1869

When exactly the Court first assembled at full strength in Allahabad it is difficult to say. But the Chief Justice was sitting in Allahabad in the autumn of 1869. It seems probable, therefore, that the full High Court did not actually get into its stride at Allahabad until late in the year 1869, after it had been in existence for over three years, though part of it had been sitting here since 1868.

Retirement of Mr. Justice Edwards in March, 1867

Mr. Justice Edwards had a very short career in his new office as a Judge of the High Court. He was on leave from March till December, 1866, and sat for less than three months in 1867, proceeding again on leave preparatory to resigning from the Bengal Civil Service in March, 1867. In his place Robert Spankie became a permanent Judge on the 7th May, 1867. His was, therefore, the first appointment, other than those nominated by the Letters Patent. Incidentally, the Judges in those days received salaries of Rs. 3,750 a month, while the Chief Justice's salary was Rs. 5,000 a month. At the time these salaries were fixed there was no income-tax in India.

Death of Mr. Justice Roberts.

Retirement of Mr. Justice Ross

The second casualty among the original Judges of the High Court occurred on the 27th January, 1870, when Mr. Justice Roberts died in the South of France at Hyeres, having left Allahabad in ill-health in August, 1869. Mr. Justice Ross sat for the last time in the Court on the 15th April, 1871, before retiring to England. Thus by the spring of 1871, three out of the original five Judges of the Court had disappeared.

The Allahabad Bar

By this time the Allahabad Bar was beginning to get into its stride and possessed many European Barristers, who had been admitted as Advocates of the Court, and a growing number of Indian Pleaders. Simultaneously with the formation of the new

High Court, rules had been made, dated the 16th June, 1866, which provided, among other things, that all Advocates and Vakils, who were entitled to appear in the Court of the Sudder Diwanny Adawlat, should, on application within three months from that date, be admitted to be enrolled and to plead in the High Court of the North-Western Provinces. As far as can be traced, there were at the time of the move to Allahabad six Advocates on the roll of the High Court : Messrs. Pritchard, Pittar, Warner, Smith, Thomas and Arathoon. But this grew rapidly, and by the end of 1871 new admissions had brought the number of Advocates up to twenty. The increase in the volume and value of the work of the High Court is demonstrated by the continuous stream of Advocates who sought admission, and, by the middle of 1877, over fifty Advocates had been enrolled, including three Indians.*

William Jardine, first Government Advocate

In 1869 or 1870, Mr. William Jardine was appointed the first Government Advocate of the North-Western Provinces. He came from England with, it is understood, greater mathematical than legal qualifications, a circumstance which gave rise to some comment at the time of his appointment. But he overcame these criticisms ; and so far as can be gathered from such reports of his addresses to the Court as have survived and from his active share in the legal life of the Province, he was a man of energy and was a courageous and able advocate. †

* Sayyid Muhammad Mahmud, enrolled on the 13th December, 1872 ; Kishori Mohan Chatterji, enrolled on the 28th January, 1875 ; and Manphul Surajbal Pandit enrolled on the 23rd February, 1877.

† The Jardine family had a close connection with India. William Jardine, the first Government Advocate of the North-Western Provinces was possibly a younger

Mr. G. E. Knox, C. S.

There is one interesting reference on the 28th January, 1871 to a criminal case before Mr. J. W. Shearer, the then Sessions Judge of Allahabad, in which the Crown was represented by the Government Advocate and "Mr. Knox, C. S.". This was the embryo of Sir George Knox, nineteen years later to become one of the Court's most celebrated Judges, who, ripe in years, retired from the Bench in 1921. He had arrived in India in 1865 and his appearance in 1871 in the High Court proves an active association with it at least from 1871 to 1921, a period of fifty years, which is a record unlikely ever to be broken. We shall be able to follow Sir George Knox's notable career when we come to it. At this early date he was an officiating magistrate and collector ; but it is not easy to understand in what capacity he was appearing "with" the Government Advocate. It was not as Legal Remembrancer, a position which he did not fill till 1885. It is, however, believed to have been customary for a Legal Remembrancer to appear whenever he liked in those days both in civil and in criminal cases. When it was stopped is not known ; but it occurred in comparatively recent times when Sir Edward Bennet, afterwards himself a Judge of the High Court, appeared before Mr. Justice Pullan and was, I am told, duly reprovod.

brother of John Jardine, a member of the Bombay Civil Service, who after a distinguished career during which he was for a time Judicial Commissioner of Burma and Recorder of Rangoon besides being Secretary to the Commission which tried the Gaekwar of Baroda in 1875, finally in 1885 became a Judge of the Bombay High Court. William Jardine left a son, who was a member of the Indian Civil Service and became the Resident at Gwalior before retiring. William Jardine lived in Allahabad in the house at the crossing of the Katra Road and the University Road, which now belongs to Lala Ram Narain Lal, the bookseller.

The early 'Vakil' Bar and its celebrities*

The new High Court on its establishment not only took over the judicial work of the abolished Sudder Diwanny Adawlat, but, as mentioned above, it also took over the Vakil Bar of the older Court. There was to be a period of transition during which the Urdu speaking Vakil Bar was to be changed into an English speaking Vakil Bar, and its enrolment under a Sanad issued by the Judges of the Sudder Diwanny Adawlat was to be replaced by enrolment under an examination conducted by the new High Court. During this period of transition, which went on up to the time of Sir Robert Stuart's Chief Justiceship, the Urdu speaking Vakils often made speeches in the High Court in Urdu and their addresses were interpreted to the Court in English by their English knowing Juniors at the Bar. The undoubted leader of the Urdu speaking Vakils was Maulvi Haider Hussain of Jaunpur. He amassed a great fortune at the Bar at Agra and at Allahabad, and founded a legal family in these Provinces, which, after him, was represented in the High Court by his son, Nawab Abdul Majid, and by his grandson, Nawab Sir Mohammad Yusuf, Bar.-at-Law, both of whom greatly distinguished themselves in the Muslim politics of India. Maulvi Haider Hussain was followed as the leader of the Vakils by Munshi Hanuman Prasad, of Banares, who was essentially an Urdu speaking Vakil of the Sudder Diwanny Adawlat, but was sufficiently young at the time of the change to acquire a smattering of English by self study and to be able to express himself in broken English in Court. He too established a great reputation at the Bar and founded a legal family which has produced distinguished lawyers both at Banares and at Allahabad. One of his grandsons, Mr. Justice Gokul Prasad, after

*Contributed by Mr. (lately Mr. Justice) S. K. Dar.

a distinguished career at the Bar, became a Judge of the High Court and his family is still represented at the Allahabad Bar by his grandson Munshi Ambika Prasad and great grandson Shri Ganesh Prasad. Following Munshi Hanuman Prasad, were a band of young Vakils drawn from all over the Province who had received the highest English education which was then available in the Anglo-Vernacular Schools established by the Government. The leaders of this group were Pandit Ajudhia Nath, Pandit Bishambhar Nath and Munshi Jwala Prasad. The last named in 1872 became the junior Government Pleader. He was a distinguished son of Munshi Man Rai, a great Sudder Diwanny Adawlat lawyer of the earlier days at Agra, who had himself been Government Pleader at Agra in the old Sudder days. But he died young. Pandit Ajudhia Nath and Pandit Bishambhar Nath made great reputations for themselves both in law and in politics and at one time were household names in these Provinces within the memory of men now living. The former was a great Sanskrit and Arabic scholar and was almost unrivalled in India as an Urdu orator. He was referred to by Sir John Edge on a public occasion as the equal of Sir John Russel, the famous English lawyer. Pandit Ajudhia Nath is now represented in the High Court by his son, Pandit Gopi Nath Kunzru, the younger brother of Dr. Hirday Nath Kunzru. Pandit Bishambhar Nath was a fine specimen of the old culture. He was one of the first twelve Indians to study English in the Delhi College before the Indian mutiny, another being the grandfather of the Rt. Hon'ble Sir Tej Bahadur Sapru, at that time a teacher of Mathematics. Pandit Bishambhar Nath died at Allahabad in 1907. He was a Persian and Urdu scholar and a fluent English speaker. Shortly before his death, he came out of his retirement at the insistence of an old client to argue his case in the High Court. A grandson of Pandit

Bishambhar Nath, Pandit Prithvi Nath, lived in Allahabad; and an Advocate of the High Court, Mr. Madanmohan Nath Raina, was married to one of his grand-daughters. These veterans were the leading members of the Vakil Bar, which, later on, came from the Universities and a continuous line exists today. To them belongs the honour of running the first race with English Advocates and of establishing the reputation and traditions of the Vakil Bar. Of the English Advocates of the Court at this time, probably the most celebrated were Mr. W. M. (later Sir Walter) Colvin*, who was enrolled on the 9th December, 1872 and Mr. T. Conlan who was enrolled on the 4th November, 1873.

Quarrels at the Bar and Legal Education

Messrs. Goodall and Newton, two barrister advocates of the Court, in 1870, came to loggerheads with each other in a domestic defamation suit which eventually came to be tried by the subordinate judge of Allahabad. It arose out of an anonymous defamatory letter concerning his professional colleague said to have been circulated by Goodall among local officials, including the Judges and Registrar of the High Court, and sundry subordinate judges and officials of the Province. Mr. Goodall defended himself in a sensational case by denying successfully that he had written the letter at all and, therefore, its authorship remains a mystery. Mr. Newton was, however, very soon afterwards suspended from practice for five years for alleged unprofessional conduct in what was probably the

*Walter Mytton Colvin was the youngest son of the Hon'ble Mr. J. R. Colvin, B. C. S., Lieutenant-Governor of the North Western Provinces who died in the Fort at Agra in 1857. He enjoyed a leading practice at the Allahabad Bar, and in 1892 was appointed a member of the North West Provinces Legislative Council. He was a Fellow of Allahabad University and was knighted in 1904 for his services on the Commission appointed to inquire into police administration.

first case of its kind in the High Court. But he eventually appealed to the Privy Council, which reversed the decision of the High Court and reinstated him in 1872. It is recorded that Mr. Newton on a certain Thursday in 1872 appeared in the High Court and presented the Order of Her Majesty in Council, whereupon he was reinstated.* In these days there was, it seems, much competition at the Bar, both professional and unprofessional. The Bar was sharply divided between the Barristers and the Vakils. Legal education was provided through the medium of law classes under the control of the Court itself. But, though Allahabad University was in 1870 only in process of being established and no University law school existed, the colleges of the North Western Provinces had been affiliated to Calcutta University. From at least the year 1870 onwards Calcutta University turned out graduates both in arts and in law, and many of these found their way into the Courts of these Provinces. But legal education within the Provinces themselves, such as it was, was only by means of the law class, directed by the High Court, of which Mr. Justice Turner appears to have been the principal patron, as he seems to have been of most other legal activities of the time. A pleaders' examination was held at irregular intervals under his auspices, and we have a record of one such examination in

*Mr. Newton acquired, or re-acquired, a large practice in the North Western Provinces and the Punjab; but he died soon after this in 1875. He was the advocate of the Begum Sumroo in her Arms suit against the Government and at the time of his death was engaged in the suit of Raja Rumben Singh, which until a recent suit in Bengal, was the Indian 'Tichbourne case'. But Mr. Newton left behind him a son, Ernest Augustus Newton, who came out to India in 1860, joined his father's office in Allahabad and was enrolled as a Pleader of this Court in 1874. He practised in Allahabad, but later went to Dehra Dun, where he became Government Pleader and acquired a large practice. In 1883 he moved to Meerut, where he was still practising in 1908. He was a well-known Freemason. (*The Cyclopaedia of India*, Vol. II, p. 231).

May, 1871, at which fifteen candidates sat to be examined in English, Hindu and Mohammadan Law, of whom eight were successful, three with credit.

A chapter of accidents in early Criminal Procedure

It may be interesting to notice an early criminal appeal of some celebrity which came before a Full Bench of the High Court in January, 1870, consisting of the Chief Justice and Ross, Turner and Spankie, JJ. Nye Singh had been tried and sentenced to transportation for life on the 27th August, 1868 by the Assistant Commissioner of Kumaon in respect of an offence committed before the Indian Penal Code came into force. In revision a Division Bench of the High Court, consisting of Turner and Spankie, JJ., were divided in opinion, the former declaring for a new trial, the latter for upholding the conviction and sentence. By a curious process, Mr. Justice Spankie, who was the junior of the two Judges, in a pencil note scribbled on a scrap of envelope, wrote "Division of opinion, lay before a third Judge". In due course, the case came before Mr. Justice Pearson, who agreed with Mr. Justice Spankie. The point had been overlooked, however, that there was then no provision, as there is now, for laying a case before a third Judge in the event of an equal division of opinion on a Division Bench. The Letters Patent of the Court at that time provided that the opinion of the Senior Judge should prevail, that is to say, in this case, the opinion of Mr. Justice Turner. The convict, therefore, applied to the High Court (probably in revision) for a retrial in accordance with Mr. Justice Turner's opinion. This application was, in due course, heard by a Full Bench of the four available Judges of the Court. But the Full Bench was itself equally divided, the Chief Justice and

Mr. Justice Turner declaring for the new trial on the one hand, and Mr. Justice Ross and Mr. Justice Spankie, on the other hand, being for upholding the conviction. This left a most distressing position in which the unfortunate convict's case had admittedly been dealt with in a manner not provided for by the Letters Patent, but in which a majority of the High Court could not be prevailed upon to say so. In the end the conviction stood (there being no majority of the Court willing to set it aside), with a strong hint by the Court itself that the best thing that could happen in the interests of all parties would be that the prisoner should receive a free pardon. Whether he was fortunate enough to be pardoned is unknown. But the case may be fairly described as an early chapter of accidents in criminal procedure. Other criminal appeals in 1870 included a case of *suttee* from Jaunpur, in which the High Court had occasion to observe that it was the second case within a short time and that it was, therefore, necessary to be severe. The lady's sons and other villagers received sentences of three years' imprisonment for assisting her.

The "Dullals"

To revert again to the troubles at the Bar, all was not well, as, both among the Vakils and the Advocates the pernicious practice of 'touting' was much in evidence even at this early stage. There was a class of professional touts, who infested the railway station and the precincts of the Courts. An attempt was made, much to their credit, by some of the Vakils themselves to have this traffic stopped. The practice was for this class of parasites, who were called "dullals" but masqueraded as "mookhtiar", to introduce clients to Vakils, and even to Advocates, in consideration of a 'chaharum' amounting to one-fourth of the ultimate fee. The early attempts to stop

it were not very successful, as the majority of the Vakils, while condemning 'dullals' as such, found it difficult to distinguish them from the genuine 'mookhtiar' whom they professed to regard as a useful class of unofficial solicitor, acting between the client and the Pleader. But it bore fruit soon afterwards, and, after a commendable address by the Bar to the High Court condemning the abuses of the 'dullals' and asking for assistance, the Bar itself in 1871 formed an "Advocates Association", pledged to suppress malpractices of this kind, which must be taken as the embryo of the Bar Council of today.

Exploitation of Litigants

In other respects, also, the new Bar was in some ways not in a very healthy condition in 1870. Fees were very high and that there was considerable exploitation in the Province of the litigant public by Vakils and Barristers alike can hardly be doubted. There were complaints on all hands of extravagant fees and of the high cost of litigation. The 'Englishman' writing from Calcutta said openly that the law courts were the weakest point in the administration, and that litigation had reduced to poverty more than half the old families in the country. Money-lenders and lawyers thrived, and there had already come into existence a system of 'law suit gambling' which had led to obvious abuses among the legal profession. This was not confined to the lower strata of Pleaders and, from what can be gathered from contemporary reports, as often as not lawyers were remunerated by results. Lord Cornwallis had a long time before, on the 11th February, 1793 (Parlt. Papers 1810 and 109), written a minute which showed that the administration of justice in India was hampered by the absence of a properly organized legal profession. Suitors either

appeared in person, or appointed unorganized Vakils or Pleaders or their own servants and Pairokars to appear for them. The persons who practised as Vakils were at that very early date often of low character and had no reputation to lose by misconduct. They took bribes and, if detected in misconduct in one court, they moved to another. They were ignorant of Hindu and Mohomedan law, as well as English law. When the servants of suitors appeared to plead their masters' causes, matters were even worse. To remedy this a certain number of Vakils had been licensed at the end of the eighteenth or the beginning of the nineteenth century, who were to have a monopoly of practice in the courts. They were to take an oath to execute their duties properly, rules were to be made as to their gratification and provision was made for their education at the Mohamadan College at Calcutta and at the Hindu College at Benares*. There was, therefore, a background of disorganization which had no doubt resulted in a good deal of malpractice, which gave rise to the strictures passed on the legal profession of those days. These comparisons of early history cannot but provoke the reflection that reform in India is slow for it would be hard to deny that, over the intervening space of seventy years too little has been done by stricter practice, by the proper staffing of Courts, by the insistence on a uniformly high standard of professional practice and conduct, and by the discouragement of all speculative litigation, to protect the public from the descendants of the 'dullals' and cheap lawyers. But that there had also quickly developed a great body of most honourable and able professional men is certain, to whom, like those who presented an address

*See Holdworth's History of English Law, Vol. XI, p. 219.

to the High Court in 1871, these things were, and are, anathema. But the progeny of the 'dullal' proved unhappily difficult to exterminate. It is interesting, also, to see how the controversies and debates which we hear today, were not new even in 1870. There were the same old contentions as there are now, as to the relative merits of the professional and the unprofessional judge, and also as to the advantages of a separate judicial service, all of which only goes to show that public opinion is, or so far has been, a poor match for bureaucracy in India.

At this date, and until about 1923, a Criminal Session was of course, held by the High Court at Allahabad for the trial of European British subjects.* In 1870 the Criminal Session yielded such interesting crimes as the theft of a case of sherry by a certain William Hutt, a guard, at Moghal Serai, for which he was duly sentenced to nine months' imprisonment, and the "criminal misappropriation" by William Thomas at Jubulpore of a bedstead—what a very awkward thing criminally to misappropriate—for which he duly received six months.

The Long Vacation

The long vacation of the High Court from its inception started in the beginning of September, and so remained until it was altered

*It was in 1883 that public opinion in India was deeply stirred, on the introduction of the Criminal Jurisdiction Bill, by the Opposition to the proposals made to remove the race disability imposed on native magistrates by Chapter 33 of the Code of Criminal Procedure against exercising criminal jurisdiction over European British subjects. The subject was hotly debated in Parliament, the Opposition being led by Sir James Stephen. But Lord Ripon, the Viceroy, eventually succeeded in getting the Bill through in a modified form which gave power of trial of Europeans only to Indian District Magistrates and Sessions Judges and allowed Europeans to require to be tried by a Jury of which at least half should be Europeans or Americans.

in May 1933. It has a duration of only six weeks now and is known as Summer vacation.

Mr. J. D. Sandford

In November 1870, Mr. J. D. Sandford became the Registrar of the High Court. But he remained as Registrar for less than a year, as in 1871 he was appointed the first Judicial Commissioner of British Burma, an office which he filled with great distinction for many years.

Appointment of Sir Walter Morgan
as Chief Justice of Madras

In the spring of 1870, the Chief Justice took leave to England. On Saturday, the 20th March, 1870, the Indian Vakils of the High Court headed by Moulvee Hyder Hossain, whom we have mentioned before as the leader of the Vakil Bar, attended His Lordship's Chamber and presented him with a moving farewell address in which they commended his "untiring patience" and his consideration for the "native Bar". The Chief Justice in his reply held out the prospect—a prospect before long to be fulfilled—of the "highest judicial offices" being filled by Indians, and concluded by saying :

"Gentlemen, you could not pay me a higher compliment than by saying"—at which point the reporter claims to have observed tears trickling down the Judicial cheeks—"that I looked upon you all with an equal eye. I am taking leave of you for six months only".

Sir Walter Morgan was a simple man, who disliked ceremony. During his absence, Mr. Justice Turner acted as Chief Justice.

The Chief Justice returned to Allahabad in November 1870 and remained in office as Chief Justice for a year longer. There are perhaps two incidents of 1871 which are worth recording. During the year the famous Law Member, Mr. Fitz James Stephen, paid a visit to Allahabad, where in the middle of his many other preoccupations over the Penal Code, the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act, he found time to deliver a speech on the "Permanent Settlement" then a subject much in debate. The other incident does not concern Allahabad, but Patna, where the Wahabees were about to be tried. To defend them no less eminent a person than Sergeant Ballantyne of Old Bailey fame from England had been instructed, and he was announced to pass through Allahabad on Saturday, the 29th April, 1871. He never came, however, and what had happened to him was for a time something of a local mystery. But the not uninteresting explanation was that Sergeant Ballantyne never left England, since early in May 1871 he was to be found in London opening the case for the claimant before Chief Justice Bovill in the famous Tichbourne case.*

On the 4th September, 1871, the appointment of Sir Walter Morgan was announced as the Chief Justice of Madras in succession to Sir Colley Scotland, and simultaneously the appointment of Mr. Robert Stuart, Q. C. of the Chancery Bar, as the new Chief Justice of the High Court of the North Western

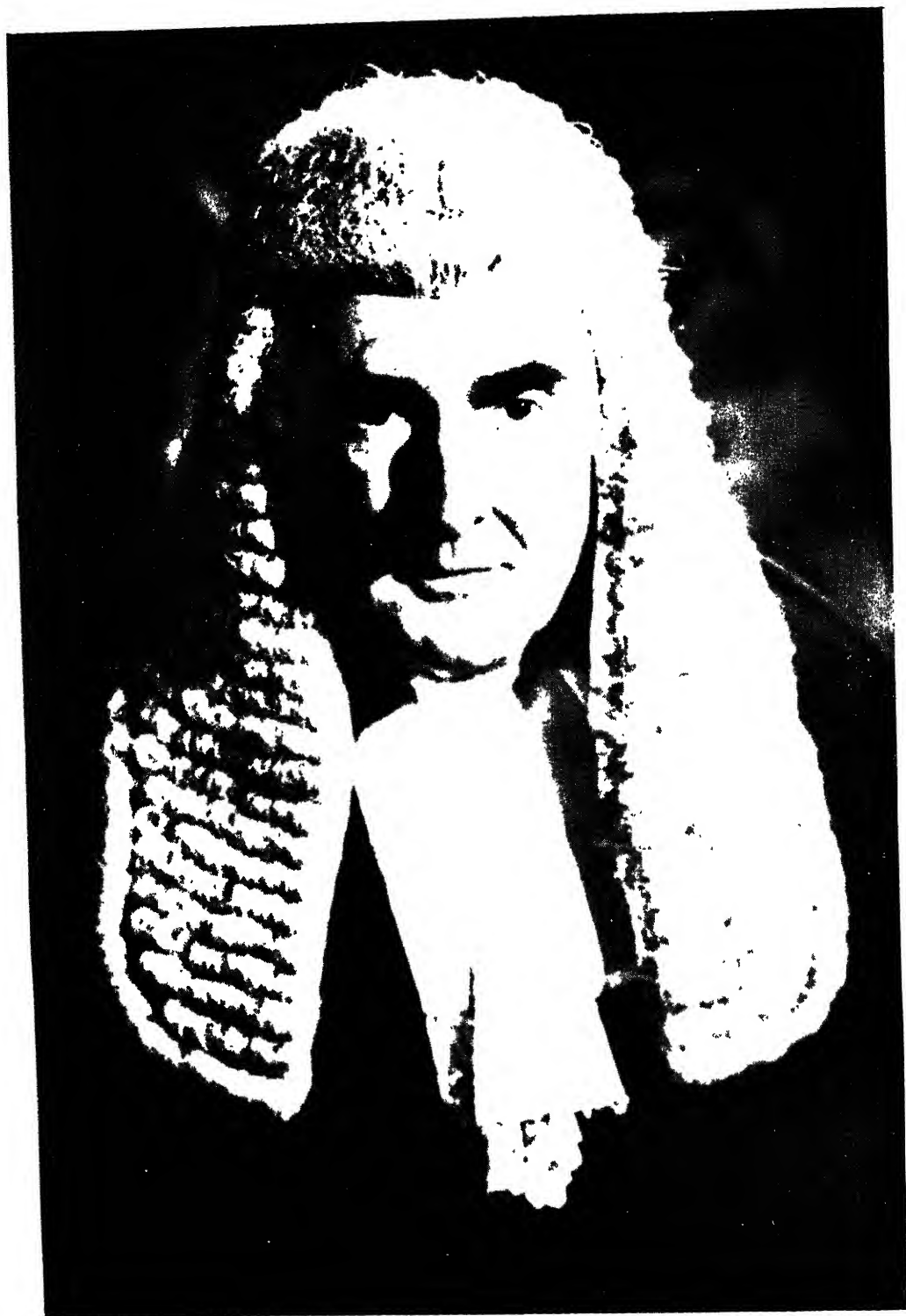
*Sergeant Ballantyne in fact came to India four years later to defend the Gaekwar of Baroda before the Commission appointed by Lord Northbrook to enquire into the charges made against him by Colonel Sir Arthur Phayre, the Resident at the Court of Baroda, of an attempt to murder him by administering arsenic and diamond dust. In the result the Commission was divided in opinion.

Provinces at Allahabad. The new Chief Justice was given by the press at least, a cold and critical reception, as he was thought not to be of such legal distinction as to merit so high an appointment as the Chief Justiceship of Allahabad, which was described in the 'Pioneer' as the fourth highest judicial appointment in the British Empire. He arrived in Allahabad with Lady Stuart in November and was sworn in on the 22nd, Sir Walter Morgan leaving for Madras on the same day. Though there was no display of emotion and no ceremonial leave taking of the retiring Chief Justice, it is clear that his departure was universally regretted. He had successfully accomplished the difficult task of creating a new High Court, and had raised the tone of the judicial service and the strength of the local Bar, of both branches of which he held the confidence. He did not perhaps, leave behind him a judicial reputation to equal that of Sir Barnes Peacock, who was almost his contemporary in Calcutta. But he scarcely had the same opportunities for doing so. Nevertheless, he was spoken of within living memory as a distinguished Judge.

If there is anything to complain of in the stewardship of Sir Walter Morgan, it must be that he has left behind him so few traces of himself. But that was apparently his character.*



*For a great deal of the material concerning the old Vakil Bar and its members I am indebted to the knowledge and courtesy of the Rt. Hon'ble Sir Tej Bahadur Sapru.




SIR O. H. MOOTHAM
Last English Chief Justice

■

The High Court for the North-Western Provinces 1866—1876

By
SIR ORBY HOWELL MOOTHAM, Kt.
Ex-Chief Justice, Allahabad High Court

Establishment of the High Court

N the 24th June, 1864, the Secretary of State for India asked the Governor-General in Council “to take into your consideration the question of establishing a High Court in the North-Western Provinces, and furnish me with your opinion on the subject at as early a date as practicable”.

The Indian High Courts Act, 1861, as all lawyers know, made provision for the establishment of High Courts at Calcutta, Bombay and Madras and for the abolition, on the creation of these courts, of the existing Supreme and Sudder Courts in those cities. It also provided for the establishment, by Letters Patent, of a High Court in any other part of Her Majesty's territories in India not already included in the jurisdiction of a High Court. High Courts were constituted in the three Presidencies in 1862, and thereafter the only Sudder Court which remained was the Court of Sudder Dewani and Nizamat Adalat for the North-Western Provinces. This Court sat at

Agra, although Bengal Regulation VI of 1831 had provided that it was "to be ordinarily stationed at Allahabad". Its abolition was now clearly only a question of time.

Perhaps it was not unnatural that the Sudder Court should doubt, when the matter was put to it in 1864, whether that time had arrived. In its opinion the cost of the proposed new Court would be high, there would be difficulty in introducing the use of the English language and there was a lack of adequate accommodation. The Sudder Court, composed of members of the Civil Service, added that it was not for it,

"to express an opinion as to the increased efficiency of the (new) Court in the determination of Judicial causes which may be expected to result by the addition of Barrister Judges to its number."

The local Government favoured the early establishment of a High Court. It was not worried about the cost and it did not think that there would be any great difficulty in providing temporary accommodation for six Judges at Agra. (Only temporary accommodation was required as the decision had already been taken to erect a new building in Allahabad for the Sudder Court.) The Government of India concurred and the Secretary of State did not delay. Letters Patent creating the High Court were issued on the 17th March, 1866 and published in the *Gazette of India* on the 13th June ; and on that day the High Court came into being and the Court of Sudder Dewani and Nizamat Adalat ceased to exist.

The Court of Sudder Dewani and Nizamat Adalat

What kind of Court did the new High Court supersede ? Fortunately we know a certain amount about it, for the way in which

it conducted its business had been investigated in 1864 by Mr. Justice Campbell of the Calcutta High Court. The cause of this enquiry was the concern of the Governor-General with the state of judicial business in the Sudder Court. The arrears on the civil side had more than doubled between the beginning of 1860 and the end of 1863. The annual statement that year was regarded with grave disquiet by the Government of India * ; and by a resolution dated the 23rd March, 1864, the Governor-General-in-Council decided that a Judge of the Calcutta High Court should be deputed to Agra. He was to make himself acquainted with the manner in which the business of the Sudder Court was conducted and to recommend the adoption of such changes as would make it conform to the system of the Calcutta High Court.

Mr. Justice Campbell spent about a fortnight in Agra, and he submitted his report on the 14th May, 1864. Mr. Justice Campbell's

*Sir Henry Maine, then a member of the Governor-General's Council, wrote a minute (it is dated the 22nd February, 1864) of which two passages justify quotation :

"If the simple consideration be taken into account that in every suit one party or set of parties must, in some sense, be in the right, and another party or group of parties in the wrong, the heavy injury to private interests and morality inflicted by keeping righteous litigants for so enormous a time from the enjoyment of what should be theirs, and maintaining wrongful litigants in the enjoyment or expectation of what should not be theirs, becomes too plain a matter of illustration."

"To anybody who is accustomed to the criticism of Judicial systems, it becomes evident on very short examination that the Indian system is founded on the assumption of the comparative incompetence of the Judge of the First Instance. Every Judge in his degree has somebody placed above him, sometimes a series of persons, whose office it is to correct his supposed mistakes But so far as the assumption relates to question of fact, I hold it to be a delusion, and based on a false theory of the means of ascertaining truth Except in physical science, there is no known measure of the truth of facts except the aggregate of the impressions made on

task was clearly a delicate one ; but he was a tactful man and it says much for the judges of the Sudder Court that they gave him their full co-operation and furnished him with all the assistance and information he required. His Report shows that the Court was not as efficient as it should have been. For this there were two reasons : the Court's failure to make a sufficient distinction between its judicial and administrative work, and to its unmethodical way of conducting its judicial business.

“ Each Judge has his separate Court-room and separate Establishment, and on going to Court commenced his business by sitting singly to dispose of boxes of English correspondence, periodical returns, miscellaneous applications and Criminal cases not requiring a Bench of two Judges. Certain days were given up altogether to Meetings of the whole Court for discussions on various subjects.

“ When two days of each week were given to English meetings and Full Benches ” (comments Mr. Justice Campbell) “ and at least the first two hours of every day to Chamber business, so that (one Judge also sitting out each day to write judgments) each Judge sat on a Bench of two Judges only three times each week, and then the Bench did not sit until the afternoon, it would scarcely have been necessary to seek for any other cause for the comparatively slow rate and consequent arrears,

the minds of men of average capacity and integrity by the evidence concerning those facts and of these impressions the most important part is produced by the language and demeanour of the witnesses and by the characteristics of their story, not as it is read on paper, but as it falls from their lips. It follows that a Judge of moderate abilities, who is actually in contact with the witnesses, has a far better chance of arriving at truth than a Judge of much higher power who hears the evidence at second-hand even when that evidence is completely taken on paper.”

for which such a system would seem to go far to account without prejudice to the industry and devotion of the Judges." It is but fair to add, as the learned Judge acknowledged, that as a result of the time devoted to it the administrative superintendence of the Sudder Court over the inferior courts was much superior to that exercised by the Calcutta High Court.

The Court seems to have conducted its judicial business in a very informal manner, for Mr. Justice Campbell thought it appropriate to suggest that

"the cases should be regularly called on in due order, and that the proceedings should be so conducted that the order and nature of the business before the Court should be intelligible to a bystander, and should not in any degree approach the semblance of Chamber business transacted between the Vakeels and the Judges."*

The increase in the Court's arrears which had so concerned the Governor General, seems to have been largely due (as we know was the case nearly a hundred years later) to an increase in the number of appeals filed, for the volume of work done by the Judges compared favourably (as again was the case a century afterwards) with

*This suggestion was accepted by the Court which later in the year issued "Rules for the Conduct of Oral Pleadings" of which the first three were:

"1. In addressing the Court, Pleaders will not approach the Bench, but will deliver the whole of their argument in a regular and connected speech addressed to the Judges from their proper places.

2. All other Pleaders, but the Pleaders addressing the Court, shall remain seated. No Pleader shall, on any pretence, address the Pleader on the other side, or any other person than the Court.

3. The two Pleaders on the same side will not be permitted to interrupt each other. The first must finish his speech and sit down, once for all,—after which the second Pleader may rise in his place and ask to be heard."

that of the other Presidency Courts. This is what Mr. Justice Campbell says :

“ . . . the total cases actually decided by the three Courts of the North-Western Provinces, Madras and Bombay, during the two years 1861 and 1862, expressed in special appeals, would be—

North-Western Provinces	..	..	..	..	3,129
Madras	..	..	..	..	1,981
Bombay	..	..	..	..	723

and in 1863 for the North-Western Provinces and Bombay (Madras returns not received)—

North-Western Provinces	..	..	..	..	2,045
Bombay	..	..	..	..	956

It will be seen that the Bombay Court, with a larger number of Judges, has done less than half the quantity of work; the business of that small Presidency being, in fact, so light that there was little more to do.”

The Court buildings were not approved by Mr. Justice Campbell. After referring to “the scandal and political loss of dignity caused by the present location of the Courts of Justice at Agra among the uncleared and uncared for ruins which remain a monument of the worst times of the mutiny” he goes on to say :

“It is more what one might imagine of the Courts and Offices of a ruined and falling Empire, after a penultimate invasion of the Goths, than the Judicial Capital of the civilised and progressive Government of 30 millions of people . . . The Senior Judge has a room which would be fairly enough adapted for Chamber business, or for a Court of inferior importance; but the other Benches are in rooms which look more like long narrow wine-vaults than Courts, and the places

extemporised for the newly arrived Judges look like compartments in an eating house.”

The state of the buildings led Mr. Justice Campbell to urge strongly that the new High Court, if it were established, should from the beginning be in Allahabad. The local Government, however, thought otherwise: it saw no difficulty in providing adequate accommodation for the new Court at Agra “though”, as it said, “it might possibly not fulfil the expectations of so exacting a visitor as Mr. G. Campbell.”

The language of argument in all civil work in the Sudder Court was Hindustani or Urdu. English could be used by agreement of both parties, but as that agreement was usually not forthcoming the use of English was, in practice, prohibited. This was, as has been mentioned, one of the objections taken by the Court to the early establishment of a High Court. In order to pave the way to the greater use of English the Court informed the local Government that it proposed to adopt a rule that after the 1st January, 1864 no pleader would be admitted to practice who was not possessed of sufficient knowledge of English to follow oral pleadings in that language. This was agreed by the Lieut. Governor who, however, thought it proper also to give power to the Judge to admit pleadings in English whenever he considered it expedient.

On the criminal side the position was very different. At that time the prosecution entered no appearance in criminal matters, and accordingly there was no “opposite-party” who could object to the use of English. Moreover under a rule of the Court anyone could appear for an accused person as his agent. It was not necessary that he should be an advocate of the Court. The result was deplorable—

“When a man has failed in half-a-dozen avocations, has been rejected as a Government servant, cashiered as a soldier, become

bankrupt as a trader, has broken down in his undertakings as a speculator or public works contractor, a kind of law of gravitation seems to bring him to the last resource of all, and he announces himself as a 'Law Agent' or by some such title."

There was one further curious feature of the old Court. In common with the other Sudder Courts of the Bengal Presidency it had no Chief Judge. Early Regulations had made provision for a Chief Judge, but a later enactment, Regulation III of 1829, abolished the designation of "Chief or Senior Judge"—the juxtaposition of the two adjectives is significant—as its use, the Regulation says, "had in some instances been productive of inconvenience." The cause of the change is to be found in the rule of seniority. All the Judges were then covenanted servants of the East India Company, and it seems that rather than depart from that rule, where the senior judge was not the best fitted for the office of Chief Judge, the Company preferred to abolish the office. In any event the want of a Chief Judge undoubtedly contributed to the unmethodical way in which the Sudder Court did its business.

The first Judges of the High Court

Sir Walter Morgan, William Edwards, Alexander Ross, William Roberts, Francis Boyle Pearson and Arthur Charles Turner were named in the Letters Patent as the first Judges of the new Court. Sir Walter Morgan, the Chief Justice, and Mr. Justice Turner were barristers; the others were members of the Bengal Civil Service and had been judges of the Sudder Court. Mr. Justice Edwards and Mr. Justice Ross must have been on leave when the new Court was established, as Mr. G. D. Turnbull and Mr. Robert Spankie (both members of the Civil Service) were appointed to officiate as Judges in

their places by a notification which appeared in the issue of the *Gazette of India* which contained the Letters Patent.

Sir Walter Morgan

Sir Walter Morgan was born in 1821. He was educated at King's College, London, and at the age of twenty-three was called to the Bar by the Middle Temple. He practised for some years in England, and then went to Calcutta where he was admitted as a member of the Supreme Court Bar. In 1854 he was clerk to the Legislative Council of India, in 1859 a Master in Equity to the Supreme Court and in 1862 he became one of the first Judges of the new High Court at Calcutta established in that year. This office he held until he was appointed the first Chief Justice of the High Court for the North-Western Provinces.

The circumstances in which he left Calcutta displeased the then Chief Justice of Bengal, Sir Barnes Peacock, who, in a Minute dated the 28th May, 1866, recorded that Mr. Justice Morgan had tried only one case (and that undefended) since the announcement in March of his appointment to Allahabad, and that he had left Calcutta early in May without having

“thought fit to communicate with me upon the subject, nor has he condescended to inform me of his intention to leave Calcutta, which, even if he has ceased to be a Judge of the High Court here, from the time of the announcement in the *London Gazette* of his appointment as Chief Justice of the High Court to be established at Agra, would not have been more than common courtesy demanded.”

Aged 41 when appointed a Judge in Calcutta, Sir Walter Morgan was 45 when he became Chief Justice—an office he held until

1871 when he became Chief Justice of Madras. He retired in 1879 and died in London in 1906 at the age of 85. He had married in 1849, but Sir Henry Braund in his brief sketch of Sir Walter Morgan had found no evidence of his wife having visited Allahabad. Sir Henry Braund records that on the Chief Justice's departure on leave in March 1870 the Indian Bar, headed by Maulvi Hyder Hossain, presented him with a moving farewell address in which they commended his "untiring patience"; and that his final departure from Allahabad was universally regretted.

Edwards, J.

Mr. Justice Edwards is the only one of the civilian judges about whom we know more than the barest biographical details. Appointed to the Bengal Civil Service in 1837 he would in the ordinary course have made his first journey to India by ship round the Cape of Good Hope. He was, however, a fortunate young man, for just before he was due to leave it was suggested by the Court of Directors that he should take the overland route from Alexandria to Suez (the canal had of course not then been constructed) to test the possibility of this route as one suitable for mails and passengers. Edwards accepted the suggestion with alacrity, and after an adventurous journey reached Bombay after nine weeks' travel. On arrival in India he was appointed Assistant Secretary to the Government of Agra, but was shortly afterwards made an Under-Secretary to the Government of India, Lord Ellenborough being then the Governor-General. In June, 1843 he went with the Governor-General from Allahabad to Calcutta, the journey being made by the quickest route, which in those days was by steamer. In the same year he was present at the battle of Maharajpore fought against the Mahratta

Confederacy. His health then appears to have given him some concern, and in 1847 he was appointed Superintendent of the Hill States—the territory lying between the Sutlej and the Jumna—with his headquarters at Simla. He seems to have been a man of warm sympathies for those under his charge; and, distressed at the want of any educational facilities for the local children, he devised a scheme whereby the monetary offerings made by princes and chiefs to the Political Agent were constituted a fund for the establishment of a central school at Simla and a local school in each chiefship. The scheme worked. A training school for teachers was established and elementary school books in the hill dialect were prepared and printed; and later on the system thus established was extended to the United Provinces.

Edwards, as Superintendent of the Hill States, was also troubled by the hardship caused to the local inhabitants by the prevailing practice of requiring them to act as porters for the carriage of baggage from the plains to the various hill stations. What was needed, he thought, was a road for wheeled traffic. He pressed the idea on the authorities, marked out part of the suggested course it should take, secured the help of army engineers and ultimately succeeded in persuading a somewhat reluctant Government under Lord Dalhousie to sanction the construction of the Kalka-Simla road.

After 15 years' continuous service in India, Edwards in 1852, went to England on leave. He returned in 1854—only to find that there was no employment for him in the political or secretarial departments. As a consequence he was, as he says, “forced to enter the judicial and revenue branch of the Service.” Clearly, he did so with reluctance. His first judicial appointment was as Magistrate and Collector at Benares. In 1855, he was transferred in the same

capacity to Budaon but was back in Benares in 1860 as the Civil and Sessions Judge. In 1862—after 8 years' judicial experience—he was appointed to the Sudder Dewani Adalat, where he remained until he became a Judge of the High Court on its establishment four years later. His career on the High Court was short. On leave when the Court was established, he did not take his seat until December 1866; and he retired in March of the following year. As a young man he had, in 1845, published a useful collection, in two volumes, of “Treaties and Engagements between the Hon. East India Company and the Native Powers in Asia”, with an introduction and notes. In the year in which he was appointed to the High Court he published the “Reminiscences of a Bengal Civilian” which contains a robust Victorian account of an adventurous and interesting life.

Unfortunately very little seems to be known about Mr. Justice Edwards' three service colleagues on the Sudder Dewani Adalat. An examination of the Civil lists and records of service (the first published volume of the latter appeared only in 1880) discloses only the barest biographical details, and of the accuracy of some of these it is difficult to be sure.

Ross, J.

Alexander Ross was educated at Edinburgh Academy and the University of Edinburgh. He entered the Bengal Civil Service in 1836 and ten years later he became Superintendent of Dehra Dun. From 1858 to 1863 he was Civil and Sessions Judge at Faruckhabad, and it was probably during this period that he became a member of a special commission appointed to try the Nawab of Faruckhabad for complicity in the events of 1857. He was a Judge of the Sudder Court and thereafter of the High Court from 1863 to 1871.

Roberts, J

William Roberts arrived in India in 1839. He was Civil and Sessions Judge of Gorakhpur in 1860, Commissioner of Rohilcund from 1862 to 1865 and a Judge of the High Court from 1866 to 1869. He died in the south of France on the 27th January, 1870.

Pearson, J.

Francis Boyle Pearson was educated at the Proprietary School at Islington, on the outskirts of London. He arrived in India in 1840 having passed, as was then required of all entrants to the service, through the East India Company's College at Haileybury. He was employed as a Settlement Officer in Jullunder in 1849 and became Registrar of the Sudder Court in the following year. After service as Civil and Sessions Judge at Benares, Saugor and Cawnpore he became an officiating judge of the Sudder Dewani Adalat in 1862. He was a Judge of the High Court from 1866 to 1881.

Turner, J

The first barrister puisne judge, Charles Arthur Turner, was educated at Exeter Grammar School and at Exeter College, Oxford, of which he became a fellow in 1855. He was called to the Bar by Lincoln's Inn in April 1858, and at the exceptionally early age of 33 he was appointed to the Allahabad High Court. He was (according to the writer of his obituary in *The Times*) an earnest member of the Church of England and a man of strong feelings and warm heart; and he had unusual physical strength. Whether he had a judicial temperament may perhaps be doubted, but it is said that he found pleasure in the intricacies of Indian land law and was

a very good administrator. He remained on the Court for twelve years and then succeeded Sir Walter Morgan as Chief Justice of Madras. While in Madras he was twice Vice-Chancellor of the University, and towards the end of his term of office he became a member of the Indian Public Service Commission. Three years after his retirement in 1885 (at the age of 52) he was appointed to the Council of India and later during his ten-year period of service became the Vice-President. It is recorded that after his retirement (money being worth more than it is today) he was able to indulge his passion for purchasing pictures. He died on the 20th October, 1907.

Turnbull and Spankie, JJ.

George Dundas Turnbull and Robert Spankie, both of whom became officiating judges of the Court in 1866, remain shadowy figures. The latter—distinguished from his brethren by being educated at Eton—had previously officiated on several occasions as a Judge of the Sudder Court. He succeeded Mr. Justice Edwards in 1867 and retired at the end of May 1881. Mr. Turnbull officiated as a Judge of the High Court in 1870, 1871 and 1873, but for reasons which can only be surmised he was never confirmed. His last appointment was as Civil and Sessions Judge of Meerut.

Jardine, J.

Mr. William Jardine, the first Government Advocate of the North-Western Provinces, officiated as a Judge of the Court for a few months in 1873 in the place of Mr. Justice Turner. He died on the 17th August of the same year.

Sir Robert Stuart

Sir Robert Stuart succeeded Sir Walter Morgan as Chief Justice in November 1871, and for the next two years the Court seems to have worked with an effective strength of four. In 1874 Mr. R. C. Oldfield and Mr. M. Brodhurst were made additional judges but neither seems to have been confirmed as a permanent judge for seven years.

Sir Robert Stuart was born in Scotland in 1816, and was therefore five years older than the Chief Justice whom he later succeeded. He was admitted to the Faculty of Advocates in Scotland in 1840. Some years later he came to London and joined Lincoln's Inn of which he became a Bencher in 1868 and Treasurer in 1884. In London he practised on the Chancery side and was made a Queen's Counsel in 1868. He was sworn in as Chief Justice at Allahabad on the 22nd November, 1871 and Sir Henry Braund notes that he received from the press a cold and critical reception as he was thought not to be of such legal distinction to warrant his high appointment.

Twice during his term of office the Court was involved in controversy with the Government, the question on each occasion being the independence of the Court from executive interference. The first occasion was in 1873. One Girdhari Lal lost a civil suit in the High Court on the defendant establishing a plea of minority ; and he was ordered to pay the defendant's costs. He was unable to do so, and was committed to the civil jail at Dehra Dun. There he was seen by the Lieut.-Governor, Sir William Muir, during a tour of inspection. The Lieut.-Governor's sympathy was aroused by Girdhari Lal's plight, and he directed the Subordinate Judge to proceed under the Provincial Insolvency Act, and if the Judge was satisfied that the judgment-debtor had no means of paying the costs, he was

directed to consider whether the debtor should not be released from imprisonment. The High Court protested that the Lieut.-Governor's action was an unwarranted interference in the judicial administration, and in March 1874 the Government of India, to whom the matter had by then been referred, upheld the High Court's view.

Much more serious was the difference of opinion which arose in 1876 over the case of *The Queen against Fuller*. Fuller was an English pleader practising in Agra. One Sunday he and his family were about to go to church; the carriage was brought to the door but the syce failed to appear. He was sent for, and when he came Fuller struck him with his open hand on his face and head so that he fell down. Fuller and his family went to church: the syce got up, went some 200 yards to an adjoining compound and died almost immediately. Fuller was tried by Mr. Leeds, the joint-magistrate at Agra who framed a charge of causing hurt under section 323 of the Indian Penal Code. There was some conflict of evidence as to the number and nature of the blows struck by Fuller, but the medical evidence was that the syce had no marks of injury and had died from rupture of the spleen which, with very slight violence, would be a sufficient cause. The magistrate sentenced Fuller to pay a fine of Rs.30 or undergo 15 days' simple imprisonment. The High Court came to know of the matter when it received a request from the Local Government, at the instance of the Government of India, for its opinion on the adequacy of the sentence. Although not coming before it judicially the record was considered by the Judges and the Local Government was informed that, although the sentence was lighter than the Court itself would have been disposed to inflict, it was not in the circumstances specially open to objection. The Government of India, understandably one may think, took a different view:

“The Governor-General in Council cannot but regret that the High Court should have considered that its duties and

responsibilities in this matter were adequately fulfilled by the expression of such an opinion. He also regrets that the Lieut.-Governor should have made no enquiry, until directed to do so by the Government of India, into the circumstances of a case so injurious to the honour of British rule, and so damaging to the reputation of British Justice in this country. . . . It was the plain duty of the magistrate to have sent Mr. Fuller for trial for the more serious offence” (i.e. of culpable homicide).

These were strong words ; and the letter containing the Governor-General’s views was published in the *Gazette of India*.

On the 5th August, 1876 the Court sent a letter to the Government of India pointing out that the Governor-General’s pronouncement gave rise to important questions concerning the position of the High Court in India and the executive authority of the Governor-General in Council. It argued that it did not lie within the province of the Government of India either to approve or condemn the action of the Court in any matter which fell within the functions committed to the Court, or to instruct a subordinate court on the conduct of its judicial functions ; and it asked that, if the Governor-General in Council were unable to concur in this view, the matter be referred to the Secretary of State for India. This letter was supplemented on the 18th August by a long minute by Sir Robert Stuart. The Chief Justice was clearly deeply disturbed at the stricture on the Court which he considered to be wholly unwarranted, both constitutionally and in fact. He also considered that Mr. Leeds had been unfairly treated* ; and he said so. On the constitutional question he

*“The Governor-General in Council views Mr. Leeds’ conduct in this case with grave dissatisfaction. He should be so informed and should be severely reprimanded.”

was decidedly of opinion that the independence of the High Courts in relation to the Executive Government had been thoroughly established, and that the former enjoyed the same independent authority and prestige as the English Courts. He added, with perhaps some lack of tact, that there were no persons or authorities in India possessed of qualifications which could fit them to supervise or in any way control the High Courts, "for His Excellency and his Council, with one exception, are not, legally and technically, learned persons." (The exception was Arthur Hobhouse, Q. C.—later Lord Hobhouse, the Law Member).

The Governor-General was unmoved and the matter accordingly went to the Secretary of State, Lord Salisbury. He dealt with the issues in two despatches dated the 22nd March, 1877. In the first he considered the proceedings before the Magistrate; and he upheld the Governor-General's censure of Mr. Leeds*. In the second he expressed the opinion that the constitutional issue between the Court and the Government did not really arise, for in censuring Mr. Leeds and expressing its regret that the Court did not bring

manded for his great want of judgment and judicial capacity. In the opinion of the Governor-General in Council, Mr. Leeds should not be entrusted, even temporarily, with the independent charge of a district, until he has given proof of better judgment and a more correct appreciation of the duties and responsibilities of Magisterial officers for at least a year."

*"The fatal consequence of Mr. Fuller's violence did not, according to Indian law, increase its criminal character; but it did increase most materially the importance of ascertaining the exact nature of the crime committed, not only accurately, but in such a manner that the accuracy of the decision should be generally recognised. Where death has been caused, it is of the utmost importance to satisfy the community that impartial justice has been done, and this necessity is specially urgent where the deceased is dependent and helpless and the person causing death belongs to a superior class of society."

his proceedings under judicial review the Governor-General was dealing with purely executive functions which it was his province to control; and the fact that these functions were partially committed to the High Court did not alter their executive character.

In these circumstances the Secretary of State turned to a consideration of the constitutional issue reluctantly and only because he had been specifically asked by the Court to do so. Her Majesty's Government did not accept the premise on which Sir Robert Stuart's argument was founded—that the Indian High Courts had the same independent authority as the English Courts. And this was so because there was a vital difference between the tenure of English and Indian Judges. Under the Act of Settlement the former held office during good behaviour; under the Indian High Courts Act of 1861 they held office during Her Majesty's pleasure. This difference, in the Secretary of State's opinion, was neither accidental nor inoperative; and it followed, in the Government's view, that the right of dismissal carried with it necessarily the right to indicate the conduct which may, if persisted in, incur dismissal. It involved the right to approve or condemn the action of the officer who is so liable to be dismissed. Lord Salisbury recognised that logically this view could justify interference in purely judicial functions, and he concluded his despatch with these words :

“But it is not necessary for me to state to you that, as a matter of policy, any executive action trenching on the independence of Judges in the exercise of their purely judicial functions, could only be justified by reasons of extreme necessity. Your Excellency is as deeply impressed as Her Majesty's Government with the importance of maintaining

intact that confidence in the impartiality of the law Courts which any interference of the Executive, except under pressure of such reasons, would destroy."

This expression of the Government's view can have given little satisfaction to the Court or its Chief Justice; and it was not until the Government of India Act of 1935 that legislative provision to secure the full independence of the Judges was made.

Judicial work of the Court

It seems now to be an impossible task to recreate the legal reputation of the judges of the Court in its early days. We can note with pleasure that the first two Chief Justices became Chief Justices of Madras and that the third became Treasurer of Lincoln's Inn. The law reports enshrine the judges' decisions, but it is probably true to say that almost without exception they deal with matters of local importance. How sound were they as expositions of the law. An examination of the records of the Judicial Committee of the Privy Council gives us an answer.

Appeals from judgments of the Court in the period from 1866 to 1876 were decided by the Judicial Committee between 1869 and 1880; and what happened to those appeals is shown in the following table :

<i>Year</i>	<i>Judgments</i>				
	total	affirmed	reversed	varied	remanded
1869-70	6	6			
1871	2	1	1		
1872	5	4	1		
1873	4	2	1	1	

<i>Year</i>	<i>Judgments</i>				
	total	affirmed	reversed	varied	remanded
1874	2	2			
1875	2	2			
1876	5	4	1		
1877	1		1		
1878	2	1			1
1879	3	2			1
1880	4	2	2		
	36	26	7	1	2

Comparative figures for the four High Courts during the same period are naturally of interest; they are as follows :

<i>Court</i>	<i>Judgments</i>				
	total	affirmed	reversed	varied	remanded
Allahabad	36	26	7	1	2
Bombay	16	13	2	1	0
Calcutta	284	171	92	17	4
Madras	43	27	14	1	1

The Law Reports

Between 1866 and 1876 the decisions of the Court were reported in two series of reports. The first to appear was entitled "Reports of the High Court of Judicature for the North-Western Provinces." The editors were two pleaders, Munshi Hanuman Pershad and Lala Lalita Pershad, and their reports, in three volumes

were in respect of the years 1866—1868, though the last decision reported in the second volume is dated the 31st August, 1867. In 1869 Mr. H. J. Tarrant of the Middle Temple was appointed Official Reporter to the Court, and beginning in that year a new series of reports appeared, called "The North-Western Provinces High Court Reports." They consist of seven volumes and were in their turn replaced in 1876 by the Allahabad Series of the Indian Law Reports. The first four volumes were edited by H. J. Tarrant, the last three by G. T. Spankie of Lincoln's Inn who had succeeded to the post of Official Reporter. The seventh and last volume reports no case decided after the end of June 1875, and possibly to make good this deficiency the first volume of the I. L. R. series (which is dated 1876-78) contains reports of 7 civil appeals and no less than 15 full bench decisions decided in the second half of 1875. In 1870 there also appeared a slender volume entitled "Selected Cases determined by the High Court of Judicature, North-Western Provinces, in its Appellate Jurisdiction." It consisted of a mere 34 pages, accompanied however by a slip reading "Parts required to complete the old series of Selected Cases will be issued in due course by the publishers." I have not been able to discover whether any more parts were in fact issued, or what the "Old Series of Selected Cases" really was.



The Judiciary and the Executive

By

SIR JOHN DOUGLAS YOUNG

Retired Judge, Allahabad High Court

IN the early days of the East India Company judicial officer were appointed by, and were under the control of, the Company. This position caused dissatisfaction and distrust in the administration of justice. The judges and Magistrates were suspected—and no doubt with good reason—of truckling to the appointing authority. Eventually the High Courts were set up in the presidency towns of Calcutta, Bombay and Madras, and later in the provinces the High Court Judges were appointed from England.

The early history of the High Courts is one of conflict with the Executive. In the early days the Executive strongly objected to the interference of the Courts, and today in the Punjab, since the new Constitution has given the Provincial Legislature greater powers to legislate, the jurisdiction of the High Court and the lower courts has been continually reduced. The tribunals which

have taken the place of the courts have even more defects than the early courts of the East India Company as they will be under the influence of both the local magnates and the appointing authority : a retrograde and dangerous step. The Central Legislature too has reduced the powers of the High Courts in the important matter of contempt of court, which in India, of all places, are of the utmost importance to preserve. There has, in fact in recent years, since the new Constitution of 1935, been an attack on the Courts and their powers which Indians will live to regret. Unless the present tendency to reduce the power of the Courts is reversed, Government will soon learn the elementary lesson—and that in no pleasant manner—that the strong and sure foundation of all Government, unless it be Fascist or Communist, is the courts, and that the undermining of that foundation is fatal and final.

The last case I heard in Lahore was one where it was necessary for the High Court to protect the rights of the subject against the wrongful use of power by Government. In that case the Government purported to use the powers conferred on it under the Defence of India Act to acquire the business of the Lahore Electric Supply Company, and so attempted to avoid a decision of the courts. The question to be decided was whether they could take possession of the property of the Company and terminate its very valuable licence to supply electricity or not. It was doubtful if Government had given the necessary notice under the licence to terminate it. If they had failed in this respect, the Company could enjoy the licence for another twenty years, a right which was worth some half a million pounds to the shareholders. This important matter was actually before the courts for decision when some genius in Government thought of the Defence of India Act and the rules made thereunder.

It was argued for the Company that the action of Government was dishonest ; that it was not justified for any war purpose, and that Government merely wished to avoid the suit pending in the courts. We agreed with the Company that the order under the rules of the Defence of India Act was both *mala fide* and *ultra vires* and granted an injunction ordering Government to return the property to the Company.

It is most important that the powers of the courts should not be whittled away. The Executive in India will certainly continue the process if they can. It is comparatively easy to do this in India as there is no real opposition now to Governments in the Legislatures, and little instructed criticism of proposed legislation on these important matters.

One of the relics of the old days still remains in the control of the magistrates by Government. These magistrates exercise judicial functions in Criminal cases. They are appointed by Government by nomination, whereas the subordinate judges on the Civil side in the Punjab are appointed as the result of an examination held by the High Court. Pay and promotion of the magistrates are entirely controlled by the appointing authority which is Government. The result is just the same as when the East India Company appointed their own judicial officers—distrust by the Public in the decisions of these courts. Appeals, it is true, lie to the sessions judge and to the High Court, but this fact cannot satisfy the public ; every one cannot appeal, and obviously the decision of the trial court which hears and sees the witnesses—especially in a country like India where liars abound in the courts—is of great importance.

I do not wish it to be thought that the magistrates are not good men. They are a good type of Indians and drawn from the

same class as the subordinate judges, but, naturally, if Government is the prosecutor, and those who have to decide the case are paid, promoted, and under the complete control of Government, they would have to be very strong and independent not to be influenced to some degree by their position ; and they are not as strong as that.

It was my habit when inspecting districts to see all the magistrates and we had some very frank and interesting conferences. I have often been told by them that they get into serious trouble if in the opinion of the police or the district magistrate they acquit too many accused persons. And with the police especially, and with some district magistrates, it is almost a crime to acquit any one. Therefore, to avoid the reputation of an "acquitting" magistrate they will convict everyone towards the end of a month if they have already exhausted their safe percentage of acquittals. They rely on the appellate court to put right this injustice.

If there is in a district a good district magistrate, the magistrates can do their duty, but it is scandalous that whether a magistrate does his duty or not should depend on who the district magistrate is. Some do not allow interference with their magistrates by the police or others. Some lecture their magistrates themselves if they show a disposition to acquit. Every magistrate is afraid of the consequences if he acts according to his conscience and all including the public wish they were under the High Court and not under Government.

One of the most objectionable results of the present position is that magistrates are subject to complaints made against them by the police. There is always a policeman in court to take notes and report to the Superintendent of Police, and the magistrates of course know this. The Superintendent sends on the report with his comments to the District Magistrate who nominally is the head of the

police. I say “nominally” as in the Punjab now-a-days there is a general complaint that the opinion of the Superintendent of Police is accepted before that of the District Magistrate in many cases. The future of the magistrate is in the hands of the District Magistrate—and really also in the hands of the police. Can it be wondered at if these Indian gentlemen, to avoid trouble and anxiety, do not always pay the attention they ought to pay to the defence? It is difficult for any one who knows India to blame them. I do not. Let the same gentlemen come under the High Court for all purposes and they will give as much satisfaction as the subordinate judges.

The separation of the Executive from the Judiciary has been for years, and continues to be, one of the crying needs of India. No Government, British, Indian or Congress, wishes to part with the power over the lives and fortunes of those they govern, given them by control of the magistracy. Various reasons are given for not transferring the magistracy to the High Court—all of them without substance. The principal objection is said to be on the ground of expense. There is no foundation for this objection. Some magistrates already do little or no judicial work; they can remain under Government. The residue, taking all the judicial work, can be transferred to the High Court with power to Government to call upon their services in an emergency.

But even if the separation did cause increased expenditure, what importance is there in that compared with the administration of justice? If justice is not given to the people, other and much greater expenditure is bound to be incurred, and the foundation of Government itself may well be undermined.

Before Congress Government took over power in most of the provinces under the new Constitution of 1935, no individual or

body was louder in their cries for the separation of the Executive from the Judiciary than Congress. They alleged, possibly with some justification, that members of their party had suffered from the ability of Government under the existing system to imprison their opponents. I had talked to many of my friends in Congress on this subject, and found them unanimous that this ancient abuse should cease. "Only let Congress govern this country" I was told "and you will see how this iniquitous arrangement will at once come to an end". On this ground I welcomed the advent of Congress as rulers in 1937. I was doomed to disappointment : not one of the Congress Provincial Governments could bear to part with power. The subordinate judiciary, in criminal matters, remained bound to the Executive.

I thought that at last justice would be done by a Congress Government at least in the United Provinces. The minister in charge of law and order there was my old friend Dr. Kailas Nath Katju, one of the best advocates I have known in India, and in every way an admirable, conscientious lawyer. Knowing how interested I was in the subject he came to Lahore to discuss the matter with me. We talked for some considerable time, and when he left I felt that we had won the fight in the United Provinces. When I saw the Bill he introduced, I found we were again defeated ; Congress had once more fallen to temptation : the Bill put the High Court in charge of some magistrates for three years, but at the end of that time they returned to their former allegiance. It would have been just as useful, and more honest, to have done nothing at all. When the magistrate knew that he was to return for pay, promotion and honours to Government, he would be just as careful to keep in the good books of Government as ever he was. The tongue in India is ever more powerful than the right arm.

There is one curious anomalous provision in the Criminal Procedure Code which allows the Executive to avoid the normal right of the High Court; if a Governor appoints a special magistrate to try a particular case, the High Court may not order a transfer of the case to another magistrate or even to itself. This provision may lead to a miscarriage of justice and should be struck out of the Code. If the Governor has a strong opinion—and he sometimes has—that the accused is guilty or innocent, of the offence charged, that opinion is known and it would take a very strong and independent magistrate to decide the case contrary to the opinion of His Excellency. Under such circumstances the accused would normally at once ask the High Court to transfer the case to another Magistrate. This he cannot do.



The Indian Judicial System

A Historical Survey

By

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High Court, Allahabad

Part A : Judicial System in Ancient India

INDIA has the oldest judiciary in the world. No other judicial system has a more ancient or exalted pedigree.

But before describing the judicial system of ancient India I must utter a warning. The reader must reject the colossal misrepresentation of Indian Jurisprudence and the legal system of ancient India by certain British writers. I shall give a few specimens. Henry Mayne described the legal system of ancient India "as an apparatus of cruel absurdities." An Anglo-Indian jurist made the following remark about what he called "the oriental habits of life" of the Indians before the British turned up in India: "It (British rule in India) is a record of experiments made by foreign rulers to

NOTE—This article contains extracts from various articles and papers published by the author ; and it shall form part of a book on Indian Jurisprudence.

govern alien races in a strange land, to adapt European institutions to Oriental habits of life, and to make definite laws supreme amongst peoples *who had always associated government with arbitrary and uncontrolled authority.*"* (italicised by me). Alan Gledhill, a retired member of the Indian Civil Service, wrote that when the British seized power in India, "there was a dearth of legal principles."†

These statements are untrue. It is not for me to guess why they were made. They may be due to sheer ignorance, or imperialist self-interest, or contempt for Indian culture and civilisation which was a part of the imperialist outlook which dominated British Jurists, historians, and thinkers in the heyday of imperialism. But the effect of this misrepresentation, which has few parallels in history, was to create a false picture of the Indian judicial system both in India and outside.

We must go to the original texts to get a true and correct picture of the legal system of ancient India. The reader will discover from them that Indian Jurisprudence was found on the rule of law; that the King himself was subject to the law; that arbitrary power was unknown to Indian political theory and jurisprudence and the king's right to govern was subject to the fulfilment of duties the breach of which resulted in forfeiture of kingship; that the judges were independent and subject only to the law; that ancient India had

* History of the Constitution of the Courts and Legislative Authorities in India, by Cowell (1872), p. 3.

† Alan Gledhill: The Republic of India, p. 147.

In fairness I must state that several British Indologists of eminence like E. B. Havell, A. L. Basham, Spellman, and others, do not share the prejudices of their imperialist predecessors though their approach may be different from ours. The reader is advised to study *The History of Aryans Rule in India* by E. B. Havell; *The Wonder that was India* by A. L. Basham, and *Political Theory of Ancient India* by John W. Spellman.

the highest standard of any nation of antiquity as regards the ability, learning, integrity, impartiality, and independence of the judiciary, and these standards have not been surpassed till today; that the Indian judiciary consisted of a hierarchy of judges with the Court of the Chief Justice (Praadvivaka) at the top, each higher Court being invested with the power to review the decision of the Courts below; that disputes were decided essentially in accordance with the same principles of natural justice which govern the judicial process in the modern State today; that the rules of procedure and evidence were similar to those followed today; that supernatural modes of proof like the ordeal were discouraged; that in criminal trials the accused could not be punished unless his guilt was proved according to law; that in civil cases the trial consisted of four stages like any modern trial—plaint, reply, hearing and decree; that such doctrines as *res judicata* (prang nyaya) were familiar to Indian jurisprudence; that all trials, civil or criminal, were heard by a bench of several judges and rarely by a judge sitting singly; that the decrees of all courts except the King were subject to appeal or review according to fixed principles; that the fundamental duty of the Court was to do justice “without favour or fear”.

Rule of law in Ancient India

Was there a rule of law in ancient India? Let the texts speak for themselves.

In the Mahabharata, it was laid down “A King who after having sworn that he shall protect his subjects fails to protect them should be executed like a mad dog.”*

*अहं वो रक्षिते त्युक्त्वा यो न रक्षति भूमिपः ।

स संहत्य निहन्तव्यः श्वेव सोन्मादातुरः ॥—महा० शा० पर्व

“The people should execute a king who does not protect them, but deprives them of their property and assets and who takes no advice or guidance from any one. Such a king is not a king but a misfortune.”*

These provisions indicate that sovereignty was based on an implied social compact and if the King violated the traditional pact, he forfeited his kingship. Coming to the historical times of Mauryan Empire, Kautilya describes the duties of a king in the Artha-shastra thus : “In the happiness of his subjects lies the King’s happiness; in their welfare his welfare; whatever pleases him he shall not consider as good, but whether pleases his people he shall consider to be good.”†

The principle enunciated by Kautilya was based on a very ancient tradition which was already established in the age of the Ramayana. Rama, the King of Ayodhya, was compelled to banish his queen, whom he loved and in whose chastity he had complete faith, simply because his subjects disapproved of his having taken back a wife who had spent a year in the house of her abductor. The king submitted to the will of people though it broke his heart.††

In the Mahabharata it is related that a common fisherman refused to give his daughter in marriage to the King of Hastinapur unless he accepted the condition that his daughter’s sons and not the heir-apparent from a former queen would succeed to the throne. The

*अरक्षितारं हर्तारं विलोपाय मनालयम् ।

तं वै राजकलिं हन्युः प्रजा सम्यङ् निर्गृहणम् ॥—महा० शा० पर्व

†प्रजा सुखे सुखं राज्ञः प्रजानां च हिते हितं ।

नात्म प्रियं हितं राज्ञः प्रजानां तु प्रियं हितं ॥—अर्थ०

††.....पतितं शोक सागरे ।

न हि पश्यामहं भूतं किञ्चिद् दुःख मतः परं ॥—वाल्मीकि रा० उ० का० ४५-१५

renunciation of the throne and the vow of life-long celibacy (Bhishma Pratigyan) by Prince Deva Vrata is one of the most moving episodes in the Mahabharata.* But its significance for jurists is that even the sovereign was not above the law. The great King of Hastinapur could not compel the humblest of his subjects to give his daughter in marriage to him without accepting his terms. It refutes the view that the kings in ancient India were “Oriental despots” who could do what they liked regardless of the law or the rights of their subjects.

Judiciary in Ancient India

With this introductory warning, I shall endeavour to describe the judicial system of ancient India. According to the Artha-shastra of Kautilya, who is generally recognised as the Prime Minister of the first Maurya Emperor (322—298 B. C.), the realm was divided into administrative units called Sthaniya, Dronamukha, Kharvatika and Sangrahana (the ancient equivalents of the modern districts, tehsils and parganas). Sthaniya was a fortress established in the centre of eight hundred villages, a dronamukha in the midst of 400 villages, a kharvatika in the midst of 200 villages and a sangrahana in the centre of ten villages. Law courts were established in each sangrahana, and also at the meeting places of districts (Janapada-sandhishu). The Court consisted of three jurists (dhramastha) and three ministers (amatya).†

*एवमेतत्करिष्यामि यथात्वमनु भाषसे ।

योऽस्य जनिष्यते पुत्रः स नो राजा भविष्यति ॥—महा० आ० प० १००, ६७

अद्य प्रभृति मे दाश ! ब्रह्मचर्यं भविष्यति ॥—महा० आ० प० १००, ८५

†धर्मस्थास्त्रयस्त्रयोऽमात्या जनपद सन्धि संग्रहण द्रोण मुख

स्थानीयेषु व्यवहारिकानर्थान् कुर्युः ।—अर्थ० ३

This suggests the existence of circuit courts, for it is hardly likely that three ministers were permanently posted in each district of the realm.

The great jurists, Manu, Yajna-alkya, Katyayana, Brihaspati and others, and in later times commentators like Vachaspati Misra and others, described in detail the judicial system and legal procedure which prevailed in India from ancient times till the close of the Middle Ages.

Hierarchy of courts in Ancient India

According to Brihaspati Smriti, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadvivaka, or adhyaksha; and at the top was the King's court.*

The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest court and the most important by the King. The decision of each higher Court superseded that of the court below.†

According to Vachaspati Misra, "The binding effect of the decisions of these tribunals, ending with that of the king, is in the ascending order, and each following decision shall prevail against the preceding one because of the higher degree of learning and knowledge".††

*कुलादिभ्योऽधिका सम्यास्तेभ्योऽध्यक्षः स्मृतोऽधिकः ।

सर्वेषामधिको राजा धर्म्यं यत्नेन निश्चितं ॥—वृ० १, ६४

†उत्तमाधम मध्यानां विवादानां विचारणात् ।

उपर्युपरि बुद्धीनां चरन्तीश्वर बुद्धयः ॥—वृ० १, ६६

††एतेषां राजान्तानां निर्णयकरणे उत्तरोत्तरस्य बलवत्त्वं ज्ञानोत्कर्षात् ।

—व्यवहार चिन्तामणि ३२

It is noteworthy that the Indian judiciary today also consists of a hierarchy of courts organised on a similar principle—the village courts, the Munsif, the Civil Judge, the District Judge, the High Court, and finally the Supreme Court which takes the place of the King's Court. We are following an ancient tradition without being conscious of it.

The institution of family judges is noteworthy. The unit of society was the joint family which might consist of four generations. Consequently, the number of the members of a joint family at any given time could be very large and it was necessary to settle their disputes with firmness combined with sympathy and tact. It was also desirable that disputes should be decided in the first instance by an arbitrator within the family. Modern Japan has a somewhat similar system of family courts. The significance of the family courts is that the judicial system had its roots in the social system which explains its success.

The fountain source of justice was the sovereign. In Indian jurisprudence dispensing justice and awarding punishment was one of the primary attributes of sovereignty.*

Being the fountain source of justice, in the beginning the king was expected to administer justice in person, but strictly according to law, and under the guidance of judges learned in law.†

A very strict code of judicial conduct was prescribed for the king. He was required to decide cases in open trial and in the court-

*स्वाम्य समात्य जनयद् दुर्गं कोश दण्ड मित्राणि प्रकृतयः ।—अर्थ० १, ६७

†यो दण्ड्यान् दण्ड्येद् राजा सम्यगवध्यांश्च घातयेत् ।

इष्टं स्यात्क्रतुभिस्तेन सहस्रं शतं दक्षिणैः ॥—याज्ञ० १, ३५६

इति संचित्य नृपतिः क्रतुतुल्यं फलं पृथक् ।

व्यवहारान् स्वयं पश्येत् सम्यै परिवृतोऽन्वहं ॥—ibid, I, 360

room, and his dress and demeanour were to be such as not to overawe the litigants. He was required to take the oath of impartiality, and decide cases without bias or attachment. Says Katyayana: "The king should enter the court-room modestly dressed, take his seat facing east, and with an attentive mind hear the suits of his litigants*. He should act under the guidance of his Chief Justice (Praadvivaka), judges, ministers and the Brahmana members of his council. A king who dispenses justice in this manner and according to law resides in heaven".**

These provisions are significant. The king was required to be modestly dressed (vineeta-vesha) so that the litigants were not intimidated. The code of conduct prescribed for the king when acting as a judge was very strict and he was required to be free from all "attachment or prejudice"† Says Narada: "If a king disposes of law suits (vyavaharan) in accordance with law and is self-restrained (in court), in him the seven virtues meet like seven flames in the fire††" Narada enjoins that when the king occupies the judgment seat (dharmaśāsanam), he must be impartial to all beings, having taken the oath of the son of Vivasvan. (The oath of Vivasvan is the oath of impartiality :

*विनीत वेशो नृपतिः सभां गत्वा समाहितः ।

आसीनः प्राङ्मुखो भूत्वा पश्येत्कार्याणि कार्याणां ॥—का० ५५

**स तु सम्यैः स्थितैर्युक्तः प्रज्ञामन्तैर्द्विजोत्तमैः ।

धर्मशास्त्रार्थं कुशलैरर्थशास्त्रं विशारदैः ॥—का० ५७

स प्राङ्मूर्ध्नि वाक् सामात्यः सत्राद्वयं पुरोहितः ।

स सम्यः प्रेक्ष्यको राजा स्वर्गे तिष्ठति धर्मतः ॥—का० ५६

†राजा धर्मं सहायस्तु द्वयोर्विवदं मानयोः ।

सम्यक् कार्याण्य वेक्षेत् रागं द्वेषं विवर्जितः ॥—ना० १, ४

††धर्मेणोद्धरतो राज्ञो व्यवहारान् कृतात्मनः ।

सम्भवन्ति गुणः सप्तवह्नेरिवार्चिषः ॥—ना० १, ३२

the son of Vivasvan is Yama, the god of death, who is impartial to all living beings).*

The King's Judges

The judges and counsellors guiding the king during the trial of a case were required to be independent and fearless and prevent him from committing any error or injustice. Says Katyayana : "If the king wants to inflict upon the litigants (vivadinam) an illegal or unrighteous decision, it is the duty of the judge (samya) to warn the king and prevent him."**

"The judge guiding the king must give his opinion which he considers to be according to law, if the king does not listen, the judge at least has done his duty.† When the judge realises that the king has deviated from equity and justice, his duty is not to please the king for this is no occasion for soft speech (vaktavyam tat priyam natra); if the judge fails in his duty, he is guilty."††

Delegation of judicial power by the King

As civilisation advanced, the king's functions became more numerous and he had less and less time to hear suits in person, and

*तस्माद्धर्मासनं प्राप्य राजा विगत मत्सरः ।

समः स्याद् सर्वभूतेषु विभ्रद वैवस्वतं व्रतं ॥—ना० १, ३४

**अधर्माज्ञां यदा राजा नियुञ्जीत विवादीनां ।

विज्ञाप्य नृपतिं सम्यस्तदा सम्यङ् निवर्तयेत् ॥—का० ७४

†सम्येनावश्य वक्तव्यं धर्मार्थं सहितं वचः ।

शृणोति यदि नो राजा स्यात्तु सम्यस्तदानृणः ॥—का० ७७

††न्यायमार्गादपेतं तु ज्ञात्वा चित्तं महीपतेः ।

वक्तव्यं तु प्रियं नात्र स सम्यः किल्बिषी भवेत् ॥—का० ७६

was compelled to delegate more and more of his judicial functions to professional judges. Katyayana says : "If due to pressure of work, the king cannot hear suits in person he should appoint as a judge a Brahmin learned in the Vedas."*

The qualifications prescribed for a judge were very high. According to Katyayana; "A judge should be austere and restrained, impartial in temperament, steadfast, God-fearing, assiduous in his duties, free from anger, leading a righteous life, and of good family.†

In course of time, a judicial hierarchy was created which relieved the king of much of the judicial work, but leaving untouched his powers as the highest court of appeal. Under the Maurya Empire a regular judicial service existed as described above.

Quality of the Judiciary : Integrity

I shall now say a few words about the quality of the Judiciary and the code of conduct prescribed for judges. The foremost duty of a judge was integrity which included impartiality and a total absence of bias or attachment. The concept of integrity was given a very wide meaning and the judicial code of integrity was very strict. Says Brihaspati : "A judge should decide cases without any consideration of personal gain or any kind of personal bias; and his decision should be in accordance with the procedure prescribed by the texts. A judge who performs his judicial duties in this

*यदा कार्यवशाद्वाजा न पश्येत्कार्यं निर्णयं ।

तदा नियुज्याद्विद्वांसं ब्राह्मणं वेदपारगं ॥—का० ६३

†दान्तं कुलीनं मध्यस्थमनुद्वेगं करं स्थिरं ।

परत्र भीरुं धर्मिष्ठमुद्युक्तं क्रोधवर्जितं ॥—का० ६४

manner achieves the same spiritual merit as a person performing a Yajna.”*

The strictest precautions were taken to ensure the impartiality of judges. A trial had to be in open court and judges were forbidden to talk to the parties privately while the suit was pending because it was recognised that a private hearing may lead to partiality (pakshapat). Shukra-nitisara says : “Five causes destroy impartiality and lead to judges taking sides in disputes. These are attachment, greed, fear, enmity, and hearing a party in private.”†

Another safeguard of judicial integrity was that suits could not be heard by a single judge, even if he was the king. Our ancients realised that when two minds confer, there is less chance of corruption or error, and they provided that the King must sit with his counsellors when deciding cases, and judges must sit in benches of uneven numbers. Shukra-nitisara enjoined that “Persons entrusted with judicial duties should be learned in the Vedas, wise in wordly experience and should function in groups of three, five, or seven.”‡ Kautilya also enjoined that suits should be heard by three judges (dharmasthastrayah). Our present judicial system, created by the British, does not follow this excellent safeguard. Today every suit is heard by a single Munsif or Civil Judge or District Judge for reasons of economy. But the State in ancient India was more interested in the quality of justice than economy.

*लोभ द्वेषादिकं त्यक्त्वा यः कुर्यात्कार्यं निर्णयं ।

शास्त्रोदितेन विधिना तस्य यज्ञं फलं भवेत् ॥ —वृ० १, ६८

†पक्षपाताधिरोपस्य कारणानि च पंच वै ।

राग लोभ भय द्वेषा वादिनोश्चरहः श्रुतिः ॥ —शुक्र० ४, ५३०

‡न्यवहारधुरं वोढुं ये सक्ताः पुङ्गवा इव ।

लोक वेदज्ञ धर्मज्ञा सप्त पंच त्रयोऽपि वा ॥ —शुक्र० ५४८

Integrity

Every Smṛiti emphasises the supreme importance of judicial integrity. Shukra-nitisara says : “The judges appointed by the king should be well versed in procedure, wise, of good character and temperament, soft in speech, impartial to[‡] friend or foe, truthful, learned in law, active (not lazy), free from anger, greed, or desire (for personal gain), and truthful.”*

Punishment for corruption

Corruption was regarded as a heinous offence and all the authorities are unanimous in prescribing the severest punishment on a dishonest judge. Brihaspati says : “A judge should be banished from the realm if he takes bribes and thereby perpetrates injustice and betrays the confidence reposed in him by a trusting public.”† A corrupt judge, a false witness, and the murderer of a Brahmin are in the same class of criminals.‡ Vishnu says : “The State should confiscate the entire property of a judge who is corrupt.”** Judicial misconduct included conversing with litigants in private during the pendency of a trial. Brihaspati says : “A judge or chief justice (Praadvivaka) who privately converses with a party before the case has been decided (anirnite), is to be punished like a corrupt judge.”††

*व्यवहारविदः प्राज्ञा वृत्तिशीला गुणान्वितः ।

रिपौ मित्रे समा ये च धर्मज्ञाः सत्यवादिनः ॥

निरालसा जितक्रोध काम लोभाः प्रियं वदः ।

राज्ञा नियोजितव्यास्ते सम्या सर्वासु जातिषु ॥ — शुक्र० ५३८-५३९

†अन्यायवादिनः सम्यास्तथैवोत्कोच जीविनः ।

विश्वस्तवश्चक्राश्चैव निर्वास्या सर्व एव ते ॥ — बृ० १, १०७

‡कूट सम्यः कूट साक्षी ब्रह्महा च समा स्मृताः । — बृ० ५, ३४

**कूट साक्षीणां सर्वस्वापहारः कार्यः । उत्कोच जीविनां सम्यानां च । — बृ० १, १७६

††अनिर्णीते तु यद्यर्थे सम्भाषते रहोऽर्थिनः । — बृ० १, १०२

Jurors

The most noteworthy feature of the judicial system was the institution of sabhasada or councillors who acted as assessors or adviser of the King. They were the equivalent of the modern jury, with one important difference. The jury of today consists of laymen—"twelve shopkeepers"—whereas the councillors who sat with the Sovereign were to be learned in law. Yajnavalkya enjoins : "The Sovereign should appoint as assessors of his court persons who are well versed in the literature of the law, truthful, and by temperament capable of complete impartiality between friend and foe."*

These assessors or jurors were required to express their opinion without fear, even to the point of disagreeing with the Sovereign and warning him that his own opinion was contrary to law and equity. Katyayana says : ' The assessors should not look on when they perceive the Sovereign inclined to decide a dispute in violation of the law ; if they keep silent they will go to hell accompanied by the King.'† The same injunction is repeated in an identical verse in Shukra-nitisara.‡ The Sovereign—or the presiding judge in his absence—was not expected to overrule the verdict of the jurors ; on the contrary he was to pass a decree (Jaya-patra) in accordance with their advice. Shukra-nitisara says : "The King after observing that the assessors have given their verdict should award the

*सुताध्ययन सम्पन्ना धर्मज्ञा सत्यवादिनः ।

राज्ञा सभासदा कार्या रिपौ मित्रे च ये समाः ॥ — याज्ञ० २, २

†अधर्मतः प्रवृत्तं हि नोपेक्षरन सभासदः ।

उपेक्षमाणाः सन्तृपा नरकं यान्त्यधोमुखाः ॥ — कात्या० ७४

‡ Shukra, IV, 5, 275.

successful party a decree (Jaya-patra).”* Their status may be compared to the Judicial Committee of the Privy Council which “humbly advise” their Sovereign, but their advice is binding. It may also be compared to the peoples’ assessors under the Soviet judicial system who sit with the professional judge in the Peoples’ Court but are equal in status to him and can overrule him.

But there was one exception. If in a difficult case the jurors were unable to come to a conclusion, the Sovereign could decide the matter himself. Shukra-nitisara says, “If they (the assessors) are unable to decide a dispute because it raises difficult or doubtful issues (*sandigdha-roopinah*), in such a case the Sovereign may decide in the exercise of his Sovereign privilege.†

Criminal Trials

In criminal trials it appears that the question of innocence or guilt of the accused was decided by the judge or the jurors, but the quantum of punishment was left to the King.‡ In the trial scene in *Mrichchhakatika*, The Little Clay Court, the judge after pronouncing *Charudatta* guilty of the murder of *Vasantasena*, referred the question of punishment to the King with the remark, “The decision with regard to *Charudatta*’s guilt or innocence lies with us and our decision is binding (*pramanam*), but the rest lies with the King.”**

* सम्यादिभिर्निर्मितं विद्भृतं प्रतिवादिनः।

द्रष्ट्वा राजानुजयिने प्रदद्याद् जय पत्रकम् ॥—शुक० ४, ५३

† निश्चेतुं ये न शक्या स्युः वादाः सन्दिग्धरूपिणः ।

सीमाद्यस्तत्र नृपतिः प्रमाणं स्यात् प्रभुर्यतः ॥—शुक०

‡ *The State and Government in Ancient India*, by A. S. Alkhar, p. 249. I am indebted to this work for several valuable ideas.

** “आर्य चारुदत्त ! निर्णये वयं प्रमाणं शेषे तु राजा ।”—मृच्छ० ६

Interpretation of the text of the law

Principles of interpretation were developed to a high degree of perfection. Judges were required to decide cases, criminal and civil, according to law (samyak, yatha-shastram, shastro ditena vidhina). This involved interpretation of the written text of the law—a task which created many problems such as the elucidation of obscure words and phrases in the text, reconciliation of conflicting provisions in the same law, solution of conflict between the letter of the law and principles of equity, justice and good conscience, adjustment of custom and smritis, and so on. This branch of law was highly developed and a number of principles were enunciated for the guidance of the courts. The most important of them related to the conflict between the dharma-shastra and the artha-shastra.

Three systems of substantive law were recognised by the court, the dharma-shastra, the artha-shastra, and custom which was called sadachara or charitra. The first consisted of laws which derived their ultimate sanction from the smritis and the second of principles of government. The border line between the two often overlapped. But the real distinction between the smritis and artha-shastra lies in the approach of each. The approach of the artha-shastra is uniformly secular, but that of the dharma-shastra not always so. In fact so remarkably secular is the artha-shastra in its approach to the problems of government that this has induced some writers to advance the theory that the artha-shastra (literal meaning : the science of 'artha' or pursuit of material welfare), did not evolve from the dharma-shastra but had an independent origin and developed parallel to it.

Whatever their respective origins, in several matters the artha-shastra and the dharma-shastra are in conflict. How did the law courts resolve this conflict when it arose in particular suits ? The first

principle was that of *avirodha*: the court must try to resolve any apparent conflict between the two.* (This is called the principle of harmonious construction today.) But if the conflict could not be resolved, the authority of the dharma-shastra was to be preferred. Bhavishya-purana provides : “Whens mriti and artha-shastra are inconsistent, the provision in the artha-shastra is superseded (by smriti); but if two smritis, or two provisions in the same smriti are in conflict, whichever is in accordance with equity is to be preferred.”† Narada smriti lays down a similar rule of interpretation according to reason in case of conflict between two texts of the smritis.‡ But while interpreting the written text of the law, the court was to bear in mind that its fundamental duty was to do justice and not to follow the letter of the law. Brihaspati enjoined : “The Court should not give its decision by merely following the letter of the *Shashtra* for if the decision is completely devoid of reasoning, the result is injustice (dharma-hani)”.** Brihaspati further says that the Court should decide according to the customs and usages of the country even if they are in conflict with the letter of the law;†† and he gives several remarkable illustrations which incidentally throw a flood of light on contemporary social conditions.

* धर्मशास्त्रार्थ शास्त्रयोरविरोधमाश्रित्य विचारणीयम् ।—व्यवहारचिन्ता०

† स्मृत्यर्थं योर्विरोधे तु अर्थशास्त्रस्य बाधन् ।

परस्पर विरोधेतु न्याययुक्तं प्रमाणवत् ॥—भविष्यपुराण

‡ धर्मशास्त्र विरोधेतु युक्तियुक्तो विधिः स्मृतः ।

व्यवहारो हि बलवान् धर्मस्तेनावहीयते ॥—ना० १, ४०

** केवलं शास्त्रमाश्रित्य न कर्तव्यो कार्य निणयः ।

युक्तिहीने विचारे तु धर्महानि प्रजायते ॥—बृ०

†† देश जाति कुलानाञ्च ये धर्मो प्राक् प्रवर्तितः ।

तथैव ते पालनीया प्रजा प्रलुभ्य तेऽन्यथा ॥—बृ०

He points out that the maternal uncle's daughter is accepted in marriage by brahmanas of the south; in Madhya desha (Central India), brahmanas become hired labourers and craftsmen and eat cow's flesh; eastern brahmanas eat fish and their women are addicted to drinking and can be touched by men even when in their monthly courses. On account of the acts specified these communities, in their respective countries, should not be liable to undergo penance or incur judicial punishment."*

Changing customs : Changing laws

In view of the vital part played by custom (achara, sada-chara, charitra) in society, the State was required to maintain an authenticated record of the customs observed in the various parts of the country. Katyayana enjoins: "Whatever custom is proved to be followed in any particular region, it should be duly recorded as established (dharya) in a record stamped with the seal of the Sovereign."† But even an established custom could be formally "disestablished" if in course of time it became inequitable. In fact, it was the duty of the Sovereign to remove from time to time the dead or rotten branches of custom. Katyayana enjoined: "When the Sovereign is satisfied that a particular custom is contrary to equity (nyayatah) in the same way—that is in the way it was established—it should be annulled by a formal decision of the

* मध्यदेशे कर्मकरा शिल्पिनश्च गवाशिनः ।
 मत्स्यादाश्च नरा पूर्वे व्यभिचाररतः स्त्रियः ॥—बृ० ५
 उत्तरे मद्यपा नार्यः स्पृश्या नृणाम् रजस्वला ।
 अनेन कर्मणा नैते प्रायश्चित्तदर्भाः ॥—बृ० ५
 † देशस्यानुमानेनैव व्यवस्था या निरूपिता ।
 लिखिता तु सदा धार्या सौद्रिता राजमुद्रया ॥—का०

Sovereign.”* This remarkable provision indicates how highly developed was the judicial and legal system of ancient India. The State was required to keep an authenticated record of all valid customs prevailing in the different regions of the realm.

Very often the decision in a suit depended on proof of the existence of a custom. Narada says, “The basis of a judicial decision (vyavahara) may be : (1) dharma-shastra, (2) (previous) judicial decisions (vyavahara) (or) custom (charitra) or the decrees of the Sovereign. The authority of these four is in the reverse order, each preceding one being superseded by the one following it.”† The artha-shastra contains an identical provision.

Evolutionary concept of law

The significance of these provisions can not be overemphasised. By gearing law to changing customs Indian jurisprudence gave the concept of law a secular content. Moreover, it developed the evolutionary concept of law and rejected the concept of an absolute, eternal, never-changing law. Both Manu and Parashara say : “The laws of kritayuga are different from those of treta and dwapara, and the laws of kali yuga are different from those of all the previous ages—the laws of each age being according to the distinctive character of each age (yuga roopanusratah).”‡

* विरुद्धं न्यायतो यस्तु चरित्रं कल्प्यते नृपैः ।

एवं तत्र निरस्येत चरित्रं तु नृपाज्ञया ॥—का० ४२

† धर्मेश व्यवहारश्च चरित्रं राजशासनम् ।

चतुष्पाद् व्यवहारोऽयमुत्तरः पूर्व बाधकः ॥—ना०

‡ अन्ये कृतयुगे धर्मास्त्रेतायां द्वापरे परे ।

अन्ये कलियुगे नृणां युगरूपानुसारतः ॥—पराशर व मनु

Mode of Proof (Law of Evidence)

The law of evidence (the mode of proof) is an index of the quality of a judicial system. In this respect, the Indian judicial system was in advance of any other system of antiquity.

In ancient societies proof by supernatural devices, such as trial by ordeal, was quite common. In England it prevailed till the very close of the middle ages. But our judicial system prohibited resort to supernatural devices, if oral or documentary evidence was available.*

Discovery of truth is real test

The real test of any judicial system is that it should enable the law courts to discover the truth, and that of ancient India stands high under this test. "In disputes the Court has to ascertain what is true and what is false from the witnesses," enjoins Gautam.† All available evidence indicates that in ancient India bearing false witness was viewed with great abhorrence.‡ All the foreign travellers from Megasthenes in the 3rd century B. C. to Huan Tsiang in the 7th century A. D. testified that truthfulness was practised by Indians in their wordly relations. "Truth they hold in high esteem", wrote Megasthenes.** Fa Hien and Huan Tsiang (who

* द्वि प्रकारा क्रिया प्रोक्ता मानसी दैविकी तथा ।—बृ० ४, ६

साक्षिं लेखानुमानश्च मानसी त्रिविधा स्मृता ।—बृ० ४, ८

यद्येको मानुषीं ब्रूयादन्यो ब्रूयात्तु दैविकीं ।

मानुषी तत्र गृहणीयान् नतु दैविकीं कदाचन ॥—कात्या० २१८

† विप्रतिपत्तौ साक्षिणी मिथ्या सत्य व्यवस्था ।—गौतम० १३, १

‡ A. L. Basham: The Wonder that was India, p. 116.

** Ancient India as described by Megasthenes and Arian, by Mc. Rindle, p. 6.

visited India during the reign of Harsha) recorded similar observations. A virtue practised for a thousand years became a tradition.

The procedure and atmosphere of the Courts discouraged falsehood. The oath was administered by the judge himself, and not by a peon as today. While giving the oath the judges were required to address the witness extolling truthfulness as a virtue and condemning perjury as a horrible sin. Brihaspati says, "Judges who are well-versed in the dharmashastra should address the witness in words praising truth and driving away falsehood (from his mind)".* The judges' address to the witness did not consist of set words but a moral exhortation intended to put the fear of God in him. All the texts are unanimous on this point.† According to Narada, "The judges should inspire awe in the witness by citing moral precepts which should uphold the majesty of truth and condemn falsehood".‡ All the smritis were unanimous in holding that perjury before a law court was a heinous sin as well as a serious crime.** There were other provisions, calculated to reduce the chances of false evidence being given. Katyayana enjoined, with much common sense, that there should be no delay in examining witnesses—obviously because delay dims the memory and stimulates imagination. "The Sovereign should not grant any delay in the deposition of witnesses ;

* सत्य प्रशंसां वचनैरन्तु तस्यापवर्जनैः ।

सम्यैः सम्बोधनीयाश्च धर्मशास्त्र प्रवेदिभिः ॥

† Manu, VIII, 79—87; Narada I, 200—228, Katyayana, 388—390; Yajna—II, 273—74.

‡ पौराणधर्म वचनैः सत्य महात्म्य दर्शनैः ।

अनृतस्यापवादैश्च मृशमुत्त्रासयेदपि ॥—नारद० १, २००

** Brihaspati V, 34; Manu VIII, 80—87; Yajna II, 73-74; Narada I, 220—228; Baudh I, 13, 14, 19.

for delay leads to great evil and results in witnesses turning away from the law.”*

Administrative Courts

An important feature of the judicial system of ancient India were the Special Courts of criminal jurisdiction called the *Kantaka-sodbana* Courts. The artha-shastra says, “Three Commissioners (pradeshtarāḥ) or three ministers shall deal with measures to suppress disturbance to peace (kantakasodhanam kuryuh).† According to the artha-shastra these courts took cognizance not only of offences against the States but also violations of the law by officials in the discharge of their official duties. Thus if traders used false weights or sold adulterated goods, or charged excessive prices, if the labourer in the factory was given less than a fair wage or did not do its work properly, the Kantakasodhana courts intervened to punish the culprits. Officers charged with misconduct, persons accused of theft, dacoity and sex offences had to appear before the same court. These Courts had all the characteristics of administrative courts. The existence of an Administrative Code is indicated in the Fourth Part of the Artha-shastra.

Administrative Code

The State in ancient India had a public sector of huge dimensions engaged in commerce and industry. The modern capitalist notion that there should be no industries run by the State would

* न काल हरणं कार्यं राज्ञा साक्षि प्रभाषणे ।

महान् दोषो भवेत्कालाद्धर्मन्यावृत्ति लक्षणः ॥—कात्या० ३५६

† प्रदेशास्त्रयो वाऽमात्या कण्टकशोधनं कुर्युः ।—अर्थ० ४, १

have appeared idiotic to our ancients. Under the Mauryan Empire there was a state mercantile marine, a state textile industry, a state mining industry, and a state trading department in charge respectively of a Superintendent-General of Shipping (Navadhyaksha), Textiles (Sootradhyaksha), mining (akradhyaksha), and commerce. The regulation of each state industry was under its own rules and all the rules were compiled and classified in the artha-shastra and may be regarded as an Administrative Code. I shall give a few illustrations.

The artha-shastra provides a complete Administrative Code prescribing rules of maritime and riparian navigation. It enjoined that the State should have a Superintendent-General of Navigation whose duties are defined thus : “The Superintendent of Ships shall examine the accounts relating to navigation not only on the oceans and mouths of the rivers, but also on lakes, natural or artificial, and in the vicinity of Sthaniya and other fortified cities.”* The Chapter contains a provision for the ships to have adequate crew for ships. There were strict regulations to ensure the safety of vessels : “For navigation on large rivers which cannot be forded (atarya) even during winter and summer season, there shall be a service of large boats (mahanavo), with a captain (shasaka), pilot (niyamaka), a crew to hold the sickle and the ropes, and to clear the boat of water.”†

The artha-shastra also contains regulations indicating that the state mercantile marine operated on the high seas and it provided

* ना वाध्यक्षस्समुद्र संयान नदीतर मुखतर प्रचारान् ।

देव सरो विसरो नदी तरांश्च स्थानीयादिष्वेक्षेत ॥—अर्थ०

† शासक नियामक दात्र रश्मि ग्राहकोत्सेचकाधिष्ठिताश्च ।

महा नावो हेमन्त ग्रीष्म तार्यासु महानदीषु प्रयोजयेत् ॥—अर्थ०

that “passengers arriving in port on the royal ships shall pay their passage money (yatra-vetanam).”^{*} The rates were to be fixed by the Superintendent-General. Incidentally, the existence of this code proves beyond doubt that the people of India were a sea-faring people with extensive trade relations with foreign countries.

Similarly, the manufacture of textiles and cotton yarn, which was a huge industry exporting textiles to foreign countries had a public as well as a private sector. The public sector was under a Superintendent-General of Textiles (Sootradhyaksha). He had a large organisation under him. The artha-shāstra prescribes the duties of the Sootradhyaksha and the other officials working under him. It enjoins : “The Superintendent-General of Weaving shall employ qualified persons to manufacture threads (sutra), coats (varma), clothes (vastra), and ropes.”[†] One of his duties was to give employment to women in their own homes. Cotton was distributed among them and spun into thread and either collected by the department or delivered by the women themselves. But the artha-shāstra contains strict regulation against the taking of liberties with such women or withholding their wages. It prescribed : “If the official of the Superintendent stares at the face of such woman or tries to engage her in conversation about matters other than her work (in other words, makes what an American would call a pass at her) he will be punished as if he is guilty of a first assault.[‡] “Delay in payment of wages shall be likewise punishable.”^{**} Another regulation made it a punishable offence to show any undue favour to a

* यात्रा वेतनं राजनौभिः सम्पतन्तः ।—अर्थ०

† सूत्राध्यक्षः सूत्रवर्म वस्त्ररज्जू व्यवहारं तज्जात पुरुषैः कारयेत् ।—अर्थ०

‡ स्त्रिया मुख सन्दर्शनेऽन्य कार्यं संभाषायां वा पूर्वं साहस दण्डः ।

** वेतन कलाति पातने मध्यमः ।

woman worker. It provided : “If an official pays wages to a woman for no work done, he will be punished.”*

Collection of taxes and import duties

There was a code prescribing rules governing the collection of taxes and import duties. This development was in charge of the Superintendent General of Taxes (Shulkadhyaksha). The merchants at the customs were liable to declare their merchandise which had to bear a seal when imported. Penalties were prescribed for making a false declaration. One rule enjoined : “If the merchandise bears no seal, their duty shall be doubled”.† But in case of counterfeit seal, the merchant was liable to pay a penalty amounting to eight times the normal duty.‡ If the seal was torn, the merchant was liable to be detained in a lock-up reserved for loiterers.**

The Administrative Code in the 4th Section of the arthashastra contains detailed regulations for the control of the other departments of the State. These regulations were not enforced by the ordinary courts but by Commissioners (Pradeshtar) who functioned as Kantak Shodhana courts.

I shall sum up the fundamental principles on which the judicial process in ancient India was founded : The trial was always in public†† and always by several judges collectively. Cases were heard

* अकृत कर्म वेतन प्रदाने च ।

† असुद्राणामत्ययो देवो द्विगुणः ।

‡ कूट सुद्राणां शुक्लाष्ट गुणो दण्डः ।

** भिन्न सुद्राणामत्ययो घटिका स्थाने ।

†† नैकः पश्येच्च कार्याणि वादिनो शृणुयाद्वचः ।

रहसि च नृपः प्राज्ञः सम्याश्चैव कदाचन ॥—शुक्र० ५, ६

in their serial order except in case of urgency.* Delay in the disposal of cases was condemned by all authorities and judges who were guilty of such delay were liable to be punished.† The Sovereign was not to interfere with the judiciary but on the contrary the latter was under a duty to interfere in case of a wrong (judicial) decision by the king.‡ The judges were to be impartial; during the pendency of the suit they were forbidden to have any private talks or relations with the parties. If a judge was guilty of partiality, or harassment, or deliberately violated the prescribed procedure, he was liable to be punished. Corruption was the most heinous offence in a judge and a corrupt judge was banished from the realm and forfeited all his property. The procedure for suits was prescribed by law, and every suit was initiated by a complaint or plaint filed by the aggrieved party who prayed for the redress of a legal wrong.** Citizens were strictly forbidden to instigate or finance or file complaints in which they were not interested, and champerty was a punishable offence. I cannot do better than quote the verdict of a very recent English writer : “In some respects the judicial system of ancient India was theoretically in advance of our own today.”††

* क्रमगतादि वादांस्तु पश्येद्वा कार्यं गौरवात् ।—शुक्र० ५, १५७

† अर्थ० ।

‡ शुक्र०, ibid.

** स्मृत्याचार व्यपेतेन मार्गेण वर्धितः परैः ।

आवेदयति यद्राज्ञे व्यवहार पदं हि तत् ॥—याज्ञ० २, ५

“When a person who is the victim of a wrong in violation of the Smritis and the custom of the realm files a plaint (or complaint) before the sovereign, this is the commencement of a law suit (Vyavahara)”.

†† Political Theory of Ancient India: John W. Spellman, Clarendon Press, Oxford, p. 128.

Part B : Judicial System in Medieval India

After the disintegration of the Harsha empire a veil of obscurity descends on the history of India which does not lift till the Muslim invasion. The country was divided once more into small kingdoms. But this did not result in any great change in the judicial system which had taken roots during the preceding thousands of years. The standards and ideals of justice were maintained in each kingdom, in spite of political divisions, the unity of civilisation was preserved, and the fundamental principles of law and procedure were applied throughout the country. This is indicated by the fact that the great commentaries on law like Mitakshara and Shukarneeti Sar were written during this period and enjoyed an all-India authority. But the establishment of the Muslim rule in India opened a new chapter in our judicial history. The Muslim conquerors brought with them a new religion, a new civilisation, and a new social system. This could not but have a profound effect on the judicial system.

The ideal of justice under Islam was one of the highest in the Middle ages. The Prophet himself set the standards. He said in the Quran, "Justice is the balance of God upon earth in which things when weighed are not by a particle less or more. And He appointed the balance that he should not transgress in respect to the balance; wherefore observe a just weight and diminish not the balance". He is further reported to have said that to God a moment spent in the dispensation of justice is better than the devotion of the man who keeps fast every day and says prayer every night for 60 years.*

* Fakhr-ud-din Mubarak Shah, Edited by D. Ross, p. 12.

Thus the administration of justice was regarded by the Muslim kings as a religious duty.

This high tradition reached its zenith under the first four Caliphs. The first Qadi was appointed by the Caliph Umar who enunciated the principle that the law was supreme and that the judge must never be subservient to the ruler. It is reported of him that he had once a personal law suit against a Jewish subject, and both of them appeared before the Qadi who, on seeing the Caliph, rose in his seat out of deference. "Umar considered this to be such an unpardonable weakness on his part that he dismissed him from office."* The Muslim kings in India brought with them these high ideals. It is reported by Badaoni that during the reign of Sultan Muhammad Tughlaq the Qadi dismissed a libel suit filed by the King himself against Shaikhzada Jami, but no harm was done to him. (This however did not prevent the Sultan from executing the defendant without a trial).† Individual Sultans had very high ideals of justice. According to Barani, Balban regarded justice as the keystone of sovereignty "wherein lay the strength of the sovereign to wipe out the oppression".‡ But unfortunately the administration of justice under the Sultans worked fitfully. The reason was that the outstanding feature of the entire Sultanate period was confusion and chaos. No Sultan felt secure for a long time. One dynasty was replaced by another within a comparatively short period, and the manner of replacement was violent. Consequently the quality of justice depended very much on the personality of the sovereign.

* Abdul Rahim: *The Principles of the Muhammedan Jurisprudence*, page 21.

† Badaoni: *Muntakhab-ut-Tawarikh*, quoted by M. B. Ahmad in the *Administration of Justice in the Medieval India*, p. 278.

‡ Brani: *Tarikh Firuz Shahi*, p. 77.

As a modern writer says, "The medieval State in India as elsewhere throughout its existence had all the disadvantages of an autocracy—everything was temporary, personal, and had no basic strength. The personal factor in the administration had become so pronounced that a slight deviation of the head from the path of duty, produced concomitant variations in the whole 'trunk'. If the King was drunk 'his Magistrates were seen drunk in public'.* Justice is not possible without security, and the Sultans of India never felt secure. Consequently, the democratic ideal of government preached by Islam was obscure in India.† During the Sultanate, Islamic standards of justice did not take root in India as an established tradition, unlike the judicial traditions of ancient India which had struck deep roots in the course of several thousand years and could not be uprooted by political divisions.

Under the Moghal Empire the country had an efficient system of government with the result that the system of justice took shape. The unit of judicial administration was the Qazi—an office which was borrowed from the Caliphate. Every provincial capital had its Qazi and at the head of the judicial administration was the Supreme Qazi of the empire (Qazi-ul-quzat). Moreover, every town and every village large enough to be classed as a Qasba had its own Qazi. In theory, a Qazi had to be "a Muslim scholar of blameless life, thoroughly conversant with the prescriptions of the sacred law.‡

According to the greatest historian of the Mughal Empire, "the main defect of the Department of Law and Justice was that there

* The Administration of Justice in Medieval India, by M. B. Ahmad, p. 272, quoting Briggs, Rise of the Muhammedan Power in India, Volume I, p. 274.

† *Ibid.*, p. 273.

‡ Encyclopaedia of Islam, Vol. II, page 606.

was no system, no organization of the law courts in a regular gradation from the highest to the lowest, nor any proper distribution of courts in proportion to the area to be served by them. The bulk of the litigation in the country (excluding those decided by caste, elders or village Panchayats mostly for the Hindus) naturally came up before the courts of Qazis or Sadars.”* This view is not accepted by other writers.†

On the appointment of a Qazi, he was charged by the Imperial Diwan in the following words :

“Be just, be honest, be impartial. Hold trials in the presence of the parties and at the court-house and the seat of Government (muhakuma). Do not accept presents from the people of the place where you serve, nor attend entertainments given by anybody and everybody. Write your decrees, sale-deeds, mortgage bonds and other legal documents very carefully, so that learned men may not pick holes in them and bring you to shame. Know poverty (faqr) to be your glory (fakhr).”‡ But due to lack of supervision and absence of good tradition, these noble ideals were not observed. According to Sircar, “all the Qazis of the Mughal period, with a few honourable exceptions, were notorious for taking bribes.”** The Emperor was the fountain source of justice. He held his court of justice every Wednesday and decided a few cases selected personally by him but he functioned not as an original court but as the court of highest appeal. There is overwhelming evidence that all the Emperors from Akbar to Aurangzeb took their judicial function

* Mughal Administration, by Sir Jadunath Sarkar, page 108.

† Administration of Justice in Medieval India: M. B. Ahmad.

‡ Manual of Officers Duties, a Persian Mss. quoted by Sir Jadunath Sircar, p. 27.

** *Ibid.*, p. 27.

seriously and discharged their duties. Jahangir made a great show of it and his Golden Chain has become famous in history. The weakness of Indo-Mohammedan Law, according to Jadunath Sircar, was that all its three sources were outside India.

“No Indian Emperor’s or Qazi’s decisions was ever considered authoritative enough to lay down a legal principle to elucidate any obscurity in the Quran, or supplement the Quranic law by following the line of its obvious intention in respect of cases not explicitly provided for by it. Hence, it became necessary for Indian Qazis to have at their elbow a digest of Islamic law and precedent compiled from the accepted Arabic writer Muslim law in India was, therefore, incapable of growth and change, except so far as it reflected changes of juristic thought in Arabia or Egypt.”* After the death of Aurangzeb, the Mughal Empire collapsed within two generations. The Provincial Governors and Faujdars arrogated to themselves the status of sovereigns and awarded punishment for criminal offences in their own names. A relic of this usurpation of the Emperors’ power is the name Faujdari given to criminal trials even today.

After the conquest of Bengal by the British the process of replacement of the Mughal system of justice by the British began. But it took a long time. In fact, the Sadre Diwani Adalat continued to function till it was replaced by the High Courts.

The Mughal judicial system has left its imprint on the present system, and a good part of our legal terminology is borrowed from it. Our civil courts of first instance are called Munsifs, the plaintiff and the defendant are termed Muddai and Muddaliya and scores of

* Manual of Officers Duties, a Persian Mss. quoted by Sir Jadunath Sircar, p. 115. The Indian legal system today suffers from a similar weakness for its theoretical foundations are outside India.

other legal terms remind us of the great days of the Mughal Empire.

Part C : The Judicial System Today

I shall now give a very brief description of our judicial system today. Barring the Supreme Court, India has no federal judiciary like the United States. Each State has its own judiciary which administers both Union and State laws. As during the Maurya Empire, each district in the State has its hierarchy of judicial officers--Munsif, Civil Judge, Civil and Sessions Judge—with the District Judge as its head. I shall not give a detailed description of the organization of our state judiciary, as it is the subject-matter of another article in this volume.

High Courts

At the apex of the State Judiciary is the High Court. It is a court of record and not subject to the superintendence of any court or authority, though appeals from its decision may lie to the Supreme Court. It consists of a Chief Justice and as many judges as the President of India may sanction. The number varies from 36 for the Allahabad High Court to 3 for Assam. The Chief Justice is in charge of the administrative work of the Court and distributes judicial work among his companion judges. He is also consulted in the appointment of judges in his own Court. But while sitting in Court, his judicial status is no higher than that of any other judge and his decisions can be reversed by any two judges in Special Appeal, and if sitting on a bench of three Judges, he can be overruled by his colleagues. He has no administrative control over any judge and his status may be described as *primus inter pares* (first among equals).

integrity. The Supreme Court has set the pace and its record of independence is second to none in the world. The High Courts, too, on the whole, have maintained a high degree of independence, and cases of judges carrying favour with the executive have been rare. The highest praise must go to our subordinate judiciary—the Munsifs, Civil Judges, and District Judges who have dispensed impartial justice between citizens of different communities and castes, and whose record compares very favourably with that of British judges who were not always impartial between Indian and British litigants. Indian Judges have lived up to the injunction of Brihaspati that a Judge should decide cases without any motive of personal gain or prejudice or bias and his decisions should be in accordance with the law prescribed by the text.

The Weakness of Our Judicial Process

The great weakness of our judicial process is that it lacks theoretical nourishment. The impact on the judicial process of theories of jurists is profound though unseen and subconscious. A great American Judge, Oliver Wendell Holmes, wrote, "The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen have a great deal more to do than the syllogism in determining the rules by which men are governed." Another great American Judge, Benjamin Cordozo, observed, "Logic, and history and custom, and utility, and the accepted standard of right conduct, are the forces which singly or in combination shape the progress of the law.*" Roscoe Pound is

* Nature of the Judicial Process (1921) Cordozo, pp. 133-11 quoted by Roscoe Pound in Jurisprudence (1949), Vol. 3, p. 470.

also of the view that “current moral ideas and ethical customs are drawn upon continually although seldom consciously.”* The Supreme Court of India has observed that in determining whether any restriction on a fundamental right was reasonable, there was no abstract of reasonableness and it was inevitable that the prevailing conditions at the time, and the social philosophy and the scale of values of the judges participating in the decision should play an important part.† In ancient India the judges were required to be well versed in all branches of knowledge (vidya) as well as jurisprudence and the science of government (dharma-shastrartha kushalai ratha shastra visharadai).‡ But what about today? What is the legal and social philosophy on which the Indian judges are brought up today?

In England, Western Europe, and the U. S. A., the judge and lawyer have received constant inspiration and education from the jurisprudence of their civilisation which has been developing for twenty centuries. Similarly, the judicial process in the U. S. S. R. derives nourishment from Marxian Jurisprudence which is constantly evolving. But where does the Indian judge or lawyer receive his inspiration from? Not from the jurisprudence of his own civilisation. He knows something of Roman Law and of the theories of western jurists but very little about the evolution of the law and jurisprudence of his own civilisation. The syllabus for the law degree in an Indian University does not include Indian Jurisprudence or the theory of the State in ancient India or the History of Indian Law. Consequently our judicial process is an edifice constructed

* Jurisprudence, Vol. I, p. 474.

† V. G. Rao *vs.* State of Madras, AIR 1952 Mad. 297.

‡ Katyayana, 57.

without theoretical foundations, or rather on foundations supporting other structures in other lands. As an illustration I may cite a recent decision of the Supreme Court in which a distinction was sought to be drawn between governmental activities proper and government's commercial undertakings which (it was observed) "have no relation to the traditional concept of government activities.* Now, traditional concept means a concept according to tradition. But which tradition: Indian or British or American? But in India as I have already indicated the state from times immemorial has had a public sector. It cannot therefore be said that state commercial enterprises have no relations to the *Indian traditional concept of governmental activities*. The Supreme Court's observation is founded on a British or American but not on any Indian traditional concept. Again the moral and theoretical foundations of our penal code are foreign. To give an illustration, Manu prescribes public censure as one of the punishments for crime.† This provision has been adopted by the Soviet Criminal Code;‡ but the Indian Penal Code, drafted by Macaulay, ignores it altogether, though it can be an effective form of punishment in many cases. Evidently the Soviet jurists have more regard for Indian jurisprudence than Indian themselves.

The low standard of legal and juristic studies in India today creates an urgent problem. On the one hand, our High Courts and the Supreme Court are invested with the power to interpret the constitution and declare any law or act of the State invalid on the ground that it is unconstitutional or illegal or restrictive of the

* *Kasturi Lal vs. State of U. P.*, A.I.R. 1965 S.C. 1039; 1965 (1) S.C.A. 809.

† वाग्दंडं प्रथमं कुर्याद् धिग्दंडं तदनन्तरं ।

चुतीयं धन दण्डं तु वध दण्डमतः परम् ॥—मनु० ८, १२६

‡ Article 21, Fundamental Criminal Code of U. S. S. R.

fundamental rights of a citizen. The law declared by the Supreme Court has a binding supremacy throughout the territory of India, and its appellate powers are wider than those of any other federal court in the world. The interpretation of the Constitution and the adjustment of the rule of law with economic progress require of our judges a profound knowledge of jurisprudence and the social science and a capacity for applying the law of social evolution to judicial process.* On the other hand, the standard of legal education in our universities and law colleges is very low. A poor legal education makes poor jurists and judges. The present disparity between the power and intellectual equipment of those who will be our future judges creates a problem which the State can ignore only at its peril.

I am all in favour of our Universities teaching the best that Western and Soviet thought and science can tell us. But the almost complete neglect of Indian jurisprudence and political philosophy leaves the education of every Indian lawyer and judge incomplete. I have come to the conclusion that the foundation of legal studies must be the study of Indian jurisprudence and every Indian University should include it as a compulsory subject for the Bachelor of Law Degree.

I concede that there is much in Indian jurisprudence which is out of date today. But this is true of every system of jurisprudence. The Greek and Roman civilisations were based on slavery. The divine right of kings prevailed in Europe till the end of the 17th

* Our ancient jurists had evolved the evolutionary concept of law and grasped the scientific truth that the laws must change with social conditions :

अन्ये कृतयुगेधर्मास्त्रेतायां द्वापरे परे ।

अन्ये कलियुगे नृणां युगरूपानुसारतः ॥—पराशर, मनु

century. The law of reason was often identified with the law of a Christian God. There was no freedom of belief or worship in Europe, and many were burnt alive for the offence of heresy, including Jeanne D' Arc who today is worshipped as a saint. Women were tried and burnt for the offence of being witches and men for having communion with the devil. Some of the peculiar absurdities which disgraced law and justice in Western Europe are absent in Indian jurisprudence. Till the very end of the seventeenth century, trials of animals for criminal offences were taking place in Europe. I shall cite the following illustrations from Keeton's *Elements of Jurisprudence*.^{*} In Germany, a cock was solemnly placed in the prisoner's box, and was accused of contumacious crowing. Counsel for the defendant failed to establish the innocence of his feathered client, and the unfortunate bird was accordingly ordered to be destroyed. In 1508, the caterpillars of Contes, in Provence, were tried and condemned for ravaging the fields, and in 1545, the beetles of St. Jean de-Maurienne were similarly indicted. So late as 1688, Gaspari Bailey of Chamberg of Savoy was able to publish a volume including forms of incitement and pleading in animal trials. These absurdities find no place in their judicial system of ancient India which according to one British writer was "in advance of our own today."[†]

Rights and Duties

An important difference between Indian and Western jurisprudence is their respective attitudes to rights and duties. They are correlated in both systems, but the emphasis is different. In Indian

^{*} *Elements of Jurisprudence*: Keeton, p.

[†] John W. Spellman, 1964, p. 128.

jurisprudence the emphasis is on obligations. In fact, the word right (adhikar) does not occur even once in the whole of the Anushasan Parva or the Arthasastra. Indian jurisprudence is founded on theories which emphasise that rights are corollaries of the duties. Even freedom of speech is recognised as a duty to speak without fear. In Western jurisprudence, on the other hand, rights, natural or legal, are primary, though every right must have a corresponding duty. This emphasis on rights in one case and obligations in the other has had important effect on social institutions like marriage. Under Indian jurisprudence marriage was a duty, a job to be performed as one of the many social obligations which everyone had to perform. But the pre-occupation of Western jurisprudence with rights has resulted in marriage being looked upon as an alliance from which each partner tries to get as much as he or she can. The high rate of divorce is the result of neglecting the 'duty' aspect of marriage.

Future role of Indian Judiciary

What shall be the role of our judiciary in the coming social and economic revolution. The judicial system does not operate in a vacuum. The administration of justice has a social function and the judicial process is only a part of the larger social process. Therefore the courts of law cannot function in defiance or ignorance of the social objectives or "the felt necessities of times" as Mr. Justice Holmes called them. The maxim *Fiat iusticia et peret mundes* (Justice must be done though the beams may fall) emphasizes the impartiality of the judges but does not permit the judiciary to be indifferent to social needs.

In theory the judiciary does not legislate; it only states what

the law is. But as Goethe observed,* "the facts of life are more potent than abstract theories."

In practice the judicial process is infinitely more complex than the bare theory of separation of powers. The judges cannot help making the law while interpreting it. Under the guise of explaining the law the U. S. Supreme Court delivered opinions which affected the destinies of the American people. A former Attorney-General of the United States writes of the U. S. Supreme Court :

" this Court has repeatedly overruled and thwarted both the Congress and the Executive. It has been in angry collision with the most dynamic and popular Presidents in our history. Jefferson retaliated with impeachment ; Jackson denied its authority ; Lincoln disobeyed a writ of the Chief Justice ; Theodore Roosevelt proposed recall of judicial decisions ; Wilson tried to liberalize its membership ; and Franklin D. Roosevelt proposed to 'reorganize' it. It is surprising that it should not only survive but, with no might except the moral force of its judgment, should attain actual supremacy as a source of constitutional dogma.

"Surprise turns to amazement when we reflect that time has proved that its judgment was wrong on the most outstanding issue upon which it has chosen to challenge the popular branches. Its judgment in the Dred Scott case was overruled by war. Its judgment that the currency that preserved the Union could not be made legal tender was overruled by the Sixteenth Amendment. Its judgments repressing labour and social legislation are now abandoned. Many of the judgments against New Deal legislation are rectified by confession of error. In no major conflict with the representative

* *Grau, teurer freund, ist alle theorie, und grun des lebens goldner baum* (Gray, my friend, is all theory, and green the golden tree of life)—Faust, Scene IV.

branches on any question of social or economic policy has time vindicated the Court.”*

Indian Constitution, a Synthesis

The role of the Indian judiciary cannot be isolated from the social objectives of the nation. Our Constitution has set before the Indian people the ambitious goal of achieving a synthesis of the Western and the Communist way of life, individual liberty and social control, abolition of anarchy in production and preservation of democracy in Government—in a word, of political and economic freedom. I must not be understood to mean that there is absolutely no political freedom in the Soviet State or economic progress in the Western democracies. The division of the world into black and white and with no shades of grey is good propaganda for the “cold war” but a poor statement of facts. The difference is one of emphasis. The Soviet system placed economic progress before political freedom because the Soviet Government has upto now been struggling with the problem of transforming a multi-national, multiracial, multi-lingual, and multi-religious community living in a huge, sprawling, state into a modern industrial nation. Today the words “economic planning” and “political democracy” are accepted on both sides of the so-called iron curtain. Our Constitution attempts to achieve a synthesis of the two. It reflects the spirit of non-alignment in the field of constitutional law. Social control of industry is in accord with the Indian tradition. I have already indicated that the state in ancient India had a huge public sector, and the Arthashastra prohibits such trade practices as cornering the market to raise prices.

* The Struggle for Judicial Supremacy: Jackson.

The Indian Constitution has set before our people a very ambitious and difficult goal. A Constitution is not a collection of abstract theories, nor does it operate in a vacuum. It reflects a way of life which enables a particular people to realise its objectives and ambitions. If it fails to do this, it will be amended or discarded by agreement or otherwise. The compulsive forces of social life are irresistible in the end.

Condition of National Survival

The people of India has taken upon itself the titanic task of the transformation of her economy within one generation. Our State is determined to achieve within a few years what took Britain and other countries several centuries. There is no choice left for India in this matter. The Himalaya is no longer our shield. Industrial strength has now become a condition of our survival.

The only other country in the world which was able within a single generation to transform itself from a backward rural and agricultural community into a modern industrial and highly powerful state is U. S. S. R. But the political system of the Soviet State is very different from that of India. We are living under a Constitution based on the principle of the parliamentary democracy, which has the merit of acting as a brake on the arbitrary exercise of power. But a brake is a brake; it provides safety, not speed. And what India needs is speed in social and economic revolution, because our very survival as a nation depends upon the speed of our economic development. Is it possible to achieve a rapid economic transformation under the present system of laws? This is the fundamental question facing not only India but the whole of the non-communist world.

This problem was stated ten years ago by an American journal, in a special article devoted to India, in the following words :

“Nikita Khrushchev has challenged the West to compete against Communism in the task of developing the under developed lands . . . And as the Fifties give way to the Sixties the question that India faces is: can these poor people, multiplying at the rate of 9 million a year be kept alive under a system of free parliamentary government? Or will India be forced, in a desperate attempt to keep its masses from starving to throw aside its democratic institutions (as much of Asia already has) and adopt in their place the ruthless methods of communist China.*

It is no exaggeration to say that on the ability, wisdom, and patriotism of our future judges depends to some extent the future of the rule of the law and parliamentary democracy in India. But wise judges do not drop like Ganga from heaven: they grow out of the social soil and are nurtured by the social atmosphere. Great judges are not born but made by proper education and great legal traditions, as were Manu, Kautilya, Katyayana, Brihaspati, Narada, Parashara, Yajnavalkya, and other legal giants of ancient India. The continued neglect of legal education is against the national interests.



* News Week, Dec. 19, 1959, Challenge of Communism.

Origin and Growth of the High Court

By
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THE growth of the British power in India was the gradual transformation of trade into sovereignty. This transformation determined the manner and method of the evolution of the judicial administration in this country. The idea of administering justice for the British subjects born out of necessity was gradually extended, with the growth of power, to Indians though through a circuitous channel.

After the settlement of Calcutta had been founded by Job Charnock in 1690, there was a gradual increase of the British population in India and the necessity was felt of a Court, which could dispense justice to them in accordance with English law. Thus in 1726 the Mayor's Court was established in the town of Calcutta, which was also constituted a Court of Oyer and Terminer. Similar Courts were also established in Bombay and Madras.

These courts administered English law which was assumed to be the *lex loci* of the Settlement. The inhabitants of the settle-

ment resorted to the English flag and were governed by the English law, irrespective of their nationality. Outside the settlement, Indians were supposed to be living in their own country and were subject to their own laws, the task of administering which had been taken upon, since the disintegration of the Mughal sovereignty, by their erstwhile deputies and governors.

Supreme Court in Bengal

In 1773, the British Parliament passed the Regulating Act (13 Geo. III Ch.63) whereby the power to constitute a Supreme Court in Bengal for the British subjects and the employees of the Company or those of the British subjects was conferred upon Her Majesty. The Charter of 1774, in pursuance of the Regulating Act, establishing the Supreme Court in Bengal, did not, however, repeat the limitations mentioned in the Act, and this omission led to a sharp conflict of opinion about the jurisdiction of the Supreme Court. Not infrequently, the Supreme Court, without drawing any light from the Regulating Act, overstepped the bounds of its jurisdiction, and thus commenced, in Bengal, an era of confusion, described by Macaulay in his Essay, as a "reign of terror; heightened by mystery for even that which was endured was less horrible than that which was anticipated." * But for this omission in the Charter of the Supreme Court, perhaps Raja Nand Kumar would not have met his doom, nor would the Raja of Cossijurah have had to abscond, to escape the clutches of the assumed jurisdiction of the Supreme Court.

*Macaulay's Essay on Warren Hastings. About the Regulating Act he observed:

"The negligent manner in which the Regulating Act had been framed put it in the power of the Chief Justice to throw a great country into the most dreadful confusion."

Mufassil Courts in Bengal, Bihar & Orissa

The administration of justice, established for Indians living outside Calcutta was different. In the year 1765 Robert Clive secured in perpetuity, for the East India Company, the Dewani of Bengal, Bihar and Orissa from the Moghal Emperor Shah Alam, who was still considered to be the Ruler of the Country, against a payment of Rs.26 lacs. By this grant the Company claimed to have become the virtual sovereign and master of this territory.

The outcome of this grant, was a new system of administration of justice. The proposals made by Warren Hastings and his Council on 15.8.1772 were adopted by the Government on 21.8.1772. "Under this plan, which contains some original provisions, yet preserved in our judicial code, Mofussil Dewanny Adawluts, or provincial courts of civil justice, under the superintendence of the collectors of revenue, were established in each district."*

In 1774 an alteration was made in the set-up of these courts by the withdrawal of the Collectors and appointment of provincial councils in six divisions. On 28.3.1780, however, it was decided to establish distinct courts in the six divisions, which were made independent of the provincial councils.

Under the Regulations passed on 21st August, 1772 made in pursuance of the said grant, the Criminal courts, designated as Faujdari Adalats were also established and placed under the superintendence of Collectors of Revenue. Later, on 18th October, 1775 their superintendence was entrusted to Naib Nazim who appointed Foujdars to preside over the said Courts. In 1781, "the

*Harington's Analysis, Vol. I, Section II, P. 20.

institution of Foujdars not having answered the intended purposes" a change was brought about. The criminal courts were continued in the several divisions subject, as before, to the superintendence of the Naib Nazim but the English judges of the Dewani Adalats were appointed Magistrates, with a power to take cognizance of offences, apprehend their perpetrators and commit them to the nearest criminal court for trial.

The authority of the English Magistrates so appointed was ineffective over the Zamindars and Landholders and consequently "the administration of justice in criminal cases was much impeded". On 27th June, 1787, therefore, the Magistrates were vested with authority to decide, upon complaints, petty offences such as petty affrays, abusive names, etc. The trial of serious offences, however, as before, were long delayed resulting in increase of crimes. On 3rd December, 1790, therefore, Regulations were passed whereby 'Courts of Circuit' under the superintendence of English Judges, assisted by persons well-versed in Mohammedan Law, were established for trying in the first instance cases of crimes and misdemeanours. The Regulations with regard to Criminal courts were consolidated and re-enacted in Reg IX of 1793.

The Revenue Administration in this country also owed its origin to the grant of Dewani whereby the East India Company had become responsible for the collection of Revenue. Prior to 1771 the task of settlement and collection of revenue was carried on by the covenanted servants of the Company in Calcutta, Twenty-four Parganas, Burdwan, Midnapore and Chittagong. In other parts the Dewans at Murshidabad and Patna were responsible for collecting the Revenue. In 1771 the Directors of the Company declared their resolution to take up the entire care and management of the Revenues through the agency of the Company's servants.

For the adjudication of questions with regard to revenue arising between the Government and the landholders and disputed claims between the landholders and their tenants or 'Ryots' the 'Mal Adawlut's' or revenue courts were established. These courts were presided over by the Collector and appeals from their decisions lay to the Board of Revenue and then on to the Governor-General-in-Council. The financial occupations of the Collectors, however, disqualified them from exercising judicial functions and adjudicating upon their own acts. By Regulation II of 1793, therefore, the Mal Adalats were abolished and their jurisdiction was transferred to the Civil Courts. Collectors were only responsible for collection of revenue.

Sadar Diwani and Nizamat Adalats in Bengal Presidency

By the Regulations of 1772 the Sadar Diwani Adalat was instituted in the Presidency under the superintendence of three or more members of the council to hear appeals from the Diwani Adalats in causes exceeding the value of five hundred rupees. on 18-10-1780, a separate judge, Sir Elijah Impey, was appointed to the charge and superintendence of that court. This appointment was alluded to, by Macaulay, as being "neither more nor less than a bribe", to get rid of the conflict between the Judiciary and the Executive. By the same regulations the Sadar Nizamut Adalat was established at Murshidabad which was presided over by a Darogah appointed by the Nazim.

The jurisdiction of the Dewani Adalats was defined by Reg. III of 1793 whereby British subjects were expressly excluded from their jurisdiction with certain exceptions. The designation of the Dewani Adalats established in the cities of Murshidabad, Dacca and Patna were after the name of

these cities, while of those established in the several Zillahs were after the name of the district or Zillah. By Reg. V of the same year four Provincial Courts of Appeal were established which besides having Appellate jurisdiction also had original jurisdiction in certain matters. Appeals from the Zillah and City courts (Dewani Adalats) which so far lay directly to the Sadar Dewani Adalat were now to be filed in these Provincial Courts and appeals against their decisions were to be filed in the Sadar Dewani Adalat. It is interesting to know that the Sadar Dewani Adalat ordinarily sat only for three days in a week. The Sadar Dewani Adalat and Sadar Nizamat Adalat of Bengal, were now to be presided over by the Governor General and the members of the Supreme Council.* The courts thus established were meant to dispense justice to Indians and had no authority over British subjects, for the Company could hardly claim to derive authority over them from the Mughal Emperor.

Courts in Banaras Province

The territory around Banaras was ceded to the East India Company by the Nawab Vazir of Awadh in the year 1775. In the Banaras Province, as it was then known, unlike Bengal the establishment of Criminal Courts preceded that of Civil Courts.

Criminal Courts

In 1781 a court of justice vested with Criminal jurisdiction

*This constitution of the Sadar Courts as provided by Regs. VI and IX of 1793 respectively was altered by Reg. II of 1801 and a Chief Judge and other judges were appointed for presiding over these courts.

was established in the city of Banaras, and in 1788, courts with similar powers were established in the districts of Ghazipur, Jaunpur and Mirzapur. The Resident at Banaras was to act as Magistrate throughout the Province of Banaras. In 1795 by Regulation, XVI the judges of the Dewani Adalats, established the same year in the city of Banaras and in the three aforesaid districts, were empowered to act as magistrates within their jurisdiction and this power so far enjoyed by the Resident at Banaras, was resumed from him. A court of Circuit, having similar powers as those in Bengal for the trial of serious offences, was created by the same Regulation, at Banaras. This Court was subordinate to the Sadar Niazmat Adalat of Bengal.

Civil Courts

Regulation VII of 1795 was responsible for establishment of Civil Courts in Banaras Province. A city court in Banaras and three Zillah courts in Jaunpur, Mirzapur and Ghazipur were established. The jurisdiction, power and authority, enjoyed by similar courts in Bengal, were extended to these courts and the rules of procedure framed by the former were made applicable. By Reg. IX of the same year a Provincial Court of Appeal was set up in Banaras to exercise jurisdiction in the Banaras Province, which consisted of the city of Banaras and the three Districts of Jaunpur, Mirzapur and Ghazipur. The Provincial Court was to hear Appeals against the judgments of the city and Zilla courts and appeals against its decisions lay to the Sudder Dewani Adalat of Bengal, Bihar and Orissa, the jurisdiction whereof was extended to Banaras Province by Reg. X of 1795.

In 1801 a major portion of the area, later known as the Agra Province, was ceded to the British by the Nawab of

Awadh, and in 1803 Zilla courts were constituted in the districts of Moradabad, Bareilly, Etawah, Farrukhabad, Kanpur, Allahabad and Gorakhpur (Vide Reg. II of 1803). In the same year by Reg. IV a Provincial Court of Appeal was also established at Bareilly for exercising appellate jurisdiction over these Zilla courts.* Appeals against the decisions of the Provincial Court of Appeal also had to be filed in the Sadar Dewani Adalat of Bengal. Out of the territories ceded by the Peshwa and Daulat Rao Sindhia six districts were formed by Reg. IX of 1804.

By Reg. VIII of 1805 five new districts were formed out of the conquered provinces, within the Doab and on the right bank of Jamuna, excepting Delhi, as also out of the territory of Bundelkhand ceded by the Peshwa. These districts were Aligarh (then spelt as Allyghur) northern Zilla of Saharanpur, the southern Zilla of Saharanpur, Agra and Bundelkhand. By the same Regulation, Zilla courts were established in these districts. The two parts of Saharanpur were, however, amalgamated in 1806. Appeals from these Zillah courts lay to the Provincial Court established by Regulation IV of 1803 and further appeals to the Sudder Dewani Adalat. Dehra Dun and Kumaon, which had been acquired from Nepal, were brought under this legal system in 1817 (Regs. IV and X).

Due to 'defects' in the superintendence of Criminal and Revenue Administration, nine divisions were created in 1829 out of the ceded and conquered territories, later known as the North Western Provinces, and each division was placed under a 'Commissioner of Revenue and Circuit.' The Provincial Courts of Banaras and Bareilly no longer remained Courts of Circuit and the power to hold "sessions

*For further details about the Provincial Courts of Appeal reference may be made to Harington's Analysis, Vol. I, Ps. 109 and 419.

of goal delivery” enjoyed by them was transferred to the Commissioners (vide Reg. I of 1829).

The amalgamation of the Civil and Criminal jurisdiction was effectuated by Reg. VII of 1831 providing for appointment of Zillah Judges as Sessions Judges whenever deemed advisable, though appeals from the orders of Magistrates lay, as before, to the Commissioner. Like the Commissioners, the Sessions Judges were subordinated to the Sudder Nizamat Adalat of Bengal.

To relieve the Zillah and City Judges against rush of work provision was made for the appointment of Principal Sadar Ameens, whenever necessary, by Reg. V of 1831. They were to try such appeals, against the decisions of Munsifs, and original suits, not exceeding five thousand rupees, as the Zillah or City Judges referred to them.

Sadar Adalats in Western Provinces

The Sadar Dewani and Nizamat Adalats were established in the Western Provinces consisting of the Province of Banaras and the ceded and conquered provinces, in 1831 by Reg. VI, ordinarily to be stationed at Allahabad, and all the nine divisions created in 1829 were placed within its jurisdiction. These courts were the outcome of discontent and disquietude caused by expense, difficulty and delay experienced by the inhabitants of these parts in prosecuting their appeals in Bengal. Though, difference in the climate of Bengal was, in the preamble of Reg. VI of 1831, attributed to be the factor deterring individuals from personally resorting to the highest appellate courts in Bengal, the vagaries of a long journey with slow means of communication available then appear to be the more probable reason. Later these courts were shifted to Agra.

By Reg. X of 1831 a Board of Revenue was created at Allahabad and the Revenue administration, hitherto under the Board of Revenue in Bengal, was taken up by it.

In the year 1833 by Reg. II the Provincial Courts of Appeal were abolished and while their appellate jurisdiction including the pending appeals, were transferred to the Sadar Dewani Adalat, the original jurisdiction including the pending suits were transferred to the several Zillah and City courts.

Formation of the North-Western Provinces

In the year 1836 the North-Western Provinces were formed out of the territory around Banaras ceded by Avadh in 1775 other territories ceded in 1801 and thereafter, the conquered territories acquired from the Maharaja of Sindhia in 1803, a portion of Bundelkhand acquired from the Peshwa ; and the territory then known as the hill districts acquired in 1816 from Nepal. The ceded territories now cover the greater portion of Uttar Pradesh. Until 1861, when the Central Provinces were created, the Sagar and Narbada territories ceded by the ruler of *Nagpur* were also part of the North Western Provinces. Jhansi, which lapsed to the Company in the year 1853, also became part of the North-Western Provinces. The Delhi territory which also formed part of the North-Western Provinces was later transferred to Punjab in 1858.

The regulation districts, * the ceded and conquered districts

*Keith, in his 'Constitutional History of India' observes at page 152. "The earlier acquisitions were treated as extensions of Bengal, and the regulations of that Presidency were applied thereto with necessary modifications. But areas taken from Nepal and the Delhi territory were excepted,....."

and the Bundelkhand area were all subject to the judicial and administrative Regulations of Lord Cornwallis. Collectors were confined to functions concerning revenue, while Judges and Magistrates dealt with the civil and minor criminal cases, subject to the control of the Sadar Diwani and Nizamat Adalats.

The importance of the city of Allahabad assumed a greater magnitude, when, in 1858, Lord Canning shifted the seat of the Government from Agra to Allahabad.

Formation of Avadh

Avadh was annexed to the territories of the East India Company in 1856 and the twelve districts of Lucknow, Bara Banki, Faizabad, Sultanpur, Hardoi, Rae Bareli, Pratapgarh, Unnao, Gonda, Bahraich, Sitapur and Kheri were placed under a Chief Commissioner.†

Constitution of High Courts in India

In the year 1861 the Indian High Courts Act and the Indian Councils Act were passed by the British Parliament. The former provided for the abolition of the Supreme Courts of Judicature and the Sadar Diwani Adalats and the constitution of the High Courts of Judicature in their place in the three Presidency towns. By section 16 a power was reserved to Her Majesty to constitute similar High Courts in other territories which were not within the local jurisdiction of any of the three proposed High Courts of Calcutta, Bombay and Madras. The Indian Councils Act empowered the Governor-General to create local Legislatures in various

† The charge was amalgamated with the Lieutenant Governorship of North Western Provinces in 1877.

provinces, though the exercise of this power, with regard to the North Western Provinces was not made till the year 1886.

The Calcutta, Madras and Bombay High Courts were established by the Royal Charter in the year 1862. In 1865, however, fresh Letters Patents were issued for these courts which are also known as the amended Letters Patent.

Charter of N. W. P. High Court

The 17th of March, 1866, marked the beginning of a new era in the administration of justice in this State. A High Court of Judicature for the North Western Provinces consisting of a Chief Justice Sir Walter Morgan and five other judges was established by the Royal Charter. The position that enured in the North Western Provinces on the eve of this memorable day, a hundred years ago, was not largely different from the conditions prevailing in the Presidencies. The dual system of justice, similar to that which had prevailed in Bengal, but with added rigour, prevailed in the North Western Provinces. Being within the Presidency of Fort William, the North Western Provinces were under the sway of the Calcutta High Court in certain spheres, while the Company's courts, with the Sadar Diwani and Nizamat Adalats at the top of the hierarchy shouldered the main responsibility of administration of justice civil and criminal.

Conferment of Jurisdiction

Broadly stated, the Charter of 1866 conferred upon the newly formed High Court, Civil, Criminal, Testamentary and Intestate as well as Matrimonial jurisdictions. The significant feature of the

Charter was the amalgamation of the dual system of administration of justice and transference to the New High Court qua some matters, of the jurisdiction exercised by the Calcutta High Court and that of the Sadar Courts with regard to the rest. The conferment of guardianship, lunacy, testamentary and intestate jurisdictions, on this High Court was made by incorporating the powers exercised by the High Court at Fort William. Judging from the amount of confusion that had been created by the adoption of a similar provision in the Charters of the Presidency High Courts, vis-a-vis their respective Supreme Courts, avoidance of this provision would have been desirable. If not to the same extent as in Bengal and other High Courts, confusion did occur in this High Court as well, in some cases;* but, the same has now been removed, to a great extent, by the recent pronouncement of the Full Bench of this Court, in the noted case of *Reeta Rani v. Raghuraj Singh*, reported in A. I. R. 1965 All. 380 : 1965 A. L. J. 54.

Law to be Administered by the High Court

So far as criminal jurisdiction was concerned, clause 23 of the Allahabad Charter prescribed application of the Indian Penal Code. With regard to civil cases the characteristic vagueness reappeared. Cases coming before the High Court in its extraordinary forum were to be decided according to law or equity that would have been administered by the courts of trial, until otherwise provided. On the Appellate side, the High Court had to apply 'the Law or Equity and rule of good conscience,' that were to be applied by the courts of trial.

* In the case reported in I.L.R. 4 All. 159, which may be cited as an instance, this court had even to ascertain the practice prevailing in the Calcutta High Court on the original side in the Lunacy jurisdiction.

The exact connotation of the phrase 'law or equity and rule of good conscience' was not and is not easily ascertainable, particularly because it also carried a historical background. Within the Presidency towns the English law was the *lex loci*, the only exception being for Hindus and Mohammedans who were allowed the benefit of their personal laws in certain spheres. Outside the Presidency towns, Regulation IV of 1793 had provided that in suits regarding succession, inheritance, marriage, caste and all religious usages, the Hindu and Mohammedan Laws were to be applied by the courts; but this provision was confined in its application to Hindus and Mohammedans only. For other persons and other types of suits there existed no rules of guidance except that the judges were to act in accordance with "justice, equity and good conscience".

In course of time the population of India, even outside the Presidency towns, could no longer be regarded as consisting of Hindus and Mohammedans alone. Besides British subjects, aliens had settled down in India. A new class of Anglo-Indians had sprung up. The number of Indian Christians was also on the increase. On account of their peculiar situation, their mixed ancestry and the abandonment of their old moorings, the Anglo-Indians and the Christians could not fall back upon their personal laws, and even if, in some cases, they could, the difficulty of ascertaining their personal laws deterred the judges from applying them. The Courts had of necessity to fall back upon "justice or equity and rule of good conscience".

It must be remembered that unlike English jurisprudence where the distinction between equity and law was well marked, the use of this phrase in the Bengal Regulations and elsewhere was merely a directive to the courts to administer the law that was applicable, to apply the principles that reason dictated and to

dispense justice which the case merited. The forms that 'justice, equity and good conscience' had assumed, in practice are by no means uninteresting. For, instance in *Stephen vs. Hume* (Fulton's Reports, p. 224) Sir John Peter Grant, in his dissenting judgment was of the opinion that Mohammedan Law was applicable to Armenians in Dacca*.

High Court Functions

Soon after the issue of the Letters Patent, on 16th June, 1866, the first Rules of Practice of the Court were framed and on 18th of June, 1866 the first sitting of the Judges of the High Court of North Western Provinces took place at Agra. The building and surroundings, in which the High Court was situate at Agra, did not befit the dignity of the highest Court of Appeal and in the year 1869 the High Court was shifted to Allahabad in the building on the Queen's Road, now Sarojini Naidu Marg, which at present houses the Board of Revenue, U. P. There is no record of any ceremony having been held at Allahabad and quietly and unostentatiously the Judges commenced their duties. The name of the Law Reports was altered from 'Agra High Court Reports' to 'N. W. P. High Court Reports'.

Civil Courts in Avadh

The Civil Courts and the Court of the Judicial Commissioner, in Avadh were formed by Act XIV of 1865. In the year 1871

*Sir George Rankin, in his book "Background to Indian Law" has admirably dealt with this subject at pages 22 to 45.

the Oudh Civil Courts Act (XXXII of 1871) was passed by the Governor-General-in-Council to consolidate and amend the laws relating to Civil Courts in Avadh. Besides constituting Civil Courts in a reformed shape, the Judicial Commissioner's Court was re-constituted as the highest court by this Act. The Judicial affiliation of Avadh to the High Court was clearly discernible in Sec. 23 of this Act which provided that if the Judicial Commissioner entertained any doubt as to the decision to be given by him he was to make a reference to the N. W. P. High Court and the case had to be decided in accordance with the judgment of the High Court. The Avdh Civil Courts Act (XIII of 1879), however, omitted the provision.

Sir Walter Morgan, the first Chief Justice of the High Courts named in the Charter itself, retired in 1871 and in his place, Sir Robert Stuart became the Chief Justice.

In the year 1874 by virtue of the powers conferred by Sec. 3 of 28 Vict. Ch. 15 the Governor-General-in-Council was pleased to bestow upon this Court the original and appellate criminal jurisdiction in respect of European British subjects in Avadh, Jabalpur division in Central Provinces (Madhya Pradesh), the line of Railway from Allahabad to Jabalpur, Morar, and Ajmer, British Merwara as well as those residing in Rampur, Rewa, Panna, Gwalior, Bikaner and various other Ruling States.* Regarding Avadh this jurisdiction ceased, in 1925, when the Chief Court was created. In other respects these Indian States claimed to be sovereign and were dispensing justice according to their own laws and through their own machinery.

*Vide Notification of the Government of India, Home Department (Judicial) No. 1203, dated 23rd September, 1874.

The Law Reports so far known as 'N. W. P. High Court Reports' yielded place to the 'Indian Law Reports' which took over the task of reporting the decisions of the High Court from the year 1876.

On 26th November, 1886 the North Western Provinces were provided with a Legislature, viz. the Lieutenant Governor's Legislative Council, and the manner of enacting laws thereafter underwent a radical change. Though the voice of the people in making the laws, was faint and feeble yet the laws were chosen rather than imposed.

Sir John Edge, who later adorned the Judicial Committee of the Privy Council, became Chief Justice of the High Court in 1886. An episode, which may be of particular interest to the judicial community occurred in his regime. In July 1887 a bill was introduced in the House of Lords for amalgamation of Avadh with the North Western Provinces. The bill had passed through the House of Lords and even had a first reading in the House of Commons. It contained a provision, in Sec. 2 to the effect that it was lawful for Her Majesty from time to time to enlarge and extend the limits of the territorial jurisdiction or the jurisdiction over persons, of any High Court of Judicature in India and further to grant such powers or make such provision "for the purposes of regulating such courts after its jurisdiction shall have been extended or enlarged". In Sec. 3 the power to direct the place or places where one or more Judges of the Court may sit was vested in such local authorities as the Governor-General-in-Council may nominate. There did not exist a practice of consulting the Judges about legislation concerning their jurisdiction and the proposed bill was not referred to the Judges of the N. W. P. High Court for opinion. A copy of the Bill was, perchance, sent by a personal friend of Sir John Edge from London.

Sir John Edge consulted his colleagues one of whom was the distinguished Syed Mahmud and having reached the conclusion that the Bill needed some drastic changes he took the liberty of sending, on 21st July, 1888, a telegram to Mr. Macpherson of the India Office, commenting upon the said Bill, in the following terms :

“We doubt words High Court Bill, purposes of regulating empower appointing Additional Judges. Deprecate Sec. 3 depriving Chief’s control over composition of Benches.”

The next day Sir John Edge sent a detailed letter to Sir Alfred Lyle at the India Office, a copy of which was endorsed to Mr. Macpherson and to Sir Auckland giving in detail the reasons for his protest. In his letter Sir John Edge, speaking for himself as well as for his colleagues adversely commented upon the proposed bill. With regard to Sec. 2 he remarked “It appears to Straight, Tyrell, Mahmud and me that the words ‘for the purpose of regulating such court’ limit the power conferred on Her Majesty by the earlier part of Sec. 2 of the Bill. We doubt very strongly whether Her Majesty could under Sec. 2 alter the constitution of the Court by making it consist of a Chief Justice and six judges instead of a Chief Justice and five judges. This is a matter which requires very careful consideration. This point may possibly have escaped the attention of those who advise the Secretary of State.” With regard to the matter of prescribing the place or places of sitting of judges Sir John Edge observed “As we read Sec. 3 of the Bill it will be for the Lieutenant Governor and not for the Chief Justice to give directions as to the particular judges who from time to time shall sit at Lucknow, if a Bench is to sit there. I do not know if the other Chief Justices have been consulted about Sec. 3 of the bill. I have not. The strong feeling of the judges here is that it should

be for the Chief Justice to determine from time to time which judges should sit at Lucknow. Personally I have no objection that the responsibility for the efficient disposal of the judicial work at Lucknow should be on the shoulders of the Lieutenant Governor and not on mine. Time will show whether this departure from the lines of Sec. 14 of the 24 and 25 Vict. Chap. CIV will work well or ill for the interests of the public and the Government".*

Remarkable as it may appear, the said Bill was dropped and another Bill was substituted in its place which left matters of detail to be provided by a supplemental charter. It is noteworthy that this time a copy of the new Bill was formally sent to the High Court on 9th January, 1889 for its comments.

After deliberation, the judges sent their comments on 15th January, 1889. Justice Mahmud expressed his views in a separate memo as he differed with the opinion formed by other judges on vital points. Amongst the points of difference was an important suggestion made by him with regard to clause 27 of the Letters Patent. Justice Mahmud was of opinion that the principle of seniority of the Judge in relation to the prevalence of his opinion had already been abrogated by Sec. 98, C. P. C. in cases of First Appeals, Second Appeals and other Miscellaneous proceedings and since it was doubtful whether it covered proceedings such as Review applications coming before a Bench of the High Court consisting of more than two Judges, hence in his view clause 27 of the Letters Patent was accordingly to be deleted or modified.† This suggestion of Justice Mahmood, though disregarded by his colleagues was accepted by his

*Both the telegram and the letter of Sir John Edge are preserved in the High Court Records.

†Reference may be made to the Original Minutes of meeting preserved in the High Court Records.

successors and was incorporated in the amendment of the Letters Patent in 1928. Much time of Legislatures of this sovereign republic of India spent over amending and validating Acts, could be saved if obtaining of the opinion of the judges upon proposed bills was made an inviolable practice, at least with regard to matters concerning their jurisdiction.

In 1890 by Act XX known as the North Western Provinces and Oudh Act, the Revenue Administration of Avadh was brought under the Lieutenant Governor of North Western Provinces while the Board of Revenue for the North Western Provinces was constituted as the highest authority in Revenue administration of Avadh and was renamed as the Board of Revenue of North Western Provinces and Oudh. By Act XXI of 1891, the appointment of Additional Judicial Commissioners for Avadh was provided.

On 18th January, 1898 the Rules of the High Court were reframed, and these rules were more detailed than the first set of Rules framed in 1866.

Formation of United Provinces

The year 1902 saw the amalgamation of the Provinces of Agra and Avadh which were together known as United Provinces of Agra and Avadh which were placed under the charge of a Lieutenant Governor. However, in 1920 the United Provinces became a Governor's Provinces.

In the year 1905 the question of alteration of the designation and the seal of the Court prescribed by the Letters Patent came under consideration. The Attorney General and the Solicitor General of England who were consulted, were of the opinion that this could be done by an Act of Governor-General-in-Council. On 16th

August, 1905 deliberations amongst the Judges took place. While agreeing with the proposal to amend the Letters Patent the Judges unanimously disagreed that this could be accomplished by any means short of an Act of Parliament, and out of the reasons advanced by them one being that Her Majesty could alter the Letters Patent only within three years as provided by section 17 of the Indian High Courts Act (24 and 25 Victoria, Ch. 104). It was pointed out that if the opinion of the Law Officers of the Crown was correct, the Governor General could do that which Her Majesty could not do.* The opinion of the learned judges seems to have prevailed for the designation of the High Court was not altered till the power to issue amending Letters Patent had been conferred by an Act of Parliament.

The problem of arrears in this High Court had emerged even towards the close of the last century though not to the degree it exists today, and a sixth Puisne Judge had to be appointed in 1908. Interesting as it may be, in an appeal some time afterwards not only the validity of this appointment was challenged but even the constitution of the High Court was attacked, on the ground of the appointment. The objection was negatived in the judgment in *Emperor vs. Ghure* (ILR 36 Alld. 168 AIR 1914 Alld. 85).

New Building

There was shortage of accommodation, and the then existing building could not accommodate the Benches so much so that the Judges had at times to sit in Chambers. As long back as the year 1890 even the rooms allotted to the Advocates and Vakils had to be resumed and on several days the judges had to sit in chambers

*For reference see the original Minutes of meetings.

due to paucity of court rooms. The shortage must have increased with the appointment of the sixth Puisne Judge, and, in the year 1911, the foundation of the present building of the High Court was laid by Sir John Stanley, Chief Justice. The actual construction of the building, however, could not be commenced till the year 1914 and looking at the enormous size and the architectural majesty and splendour, it is admirable that the constructions were completed in less than 2½ years. Due to the difference in the climatic conditions the plan of the building of the High Court had necessarily to be different from those of the Calcutta or Bombay High Courts. In those days mechanical devices of cooling a building were not available and a significant feature of the present High Court building was the double roofing with the famous Allahabad tiles on the top, to mitigate the effects of the phenomenal heat of this part of the country. On 27th November, 1916, the new building was opened by Lord Chelmsford, the then Viceroy, at an imposing ceremony. At the function which was held in the morning, Sir Henry Richards, the Chief Justice, some time also the Vice-Chancellor of the Allahabad University, delivered his opening address and referred to the progress of the High Court during the preceding 50 years and to the increase in the size of the Court and the work. The increase of work in this Court had been almost in a geometrical proportion and can be judged from the fact that while there were 350 subordinate courts in the year 1866 their number had increased to 1276 in the year 1915.

The Government of India Act of 1915 (5 & 6 Geo. V, Ch. 61) as amended by the Amending Act of 1916 (6 & 7 Geo. V, Ch. 37) empowered His Majesty the King of England to make amendments in the Letters Patent from time to time as may be necessary. This High Court continued under its original name till 1919 when

on 11th March, a supplementary Letters Patent was issued whereby the High Court was named as the High Court of Judicature at Allahabad, the designation which continues up to the present day.

On 29th October, 1919 Sir Grimwood Mears was sworn in as Chief Justice. His regime, which lasted for about thirteen years, the longest that any Chief Justice has so far enjoyed in this High Court was not devoid of events. On 12th December, 1921 the Prince of Wales visited the High Court and a reception to welcome him was held in the High Court by the Bench and Bar. Lord Reading, the Viceroy of India, visited the High Court on 1st November, 1923 and a function for welcoming him was held in the High Court and was attended by the judges and lawyers of this court and other distinguished persons.

Chief Court of Avadh

As already mentioned by U. P. Act 4 of 1925 the Chief Court was established in Avadh, consisting of a Chief Judge and four or more Judges, to be appointed by the Governor General. It was declared as the highest court of civil and criminal appeals and revisions. Mr. Justice Stuart a Judge of the Allahabad High Court was appointed the first Chief Judge of the Chief Court of Avadh.

The Letters Patent of the High Court contained a provision that in case of difference of opinion amongst the Judges, when neither opinion was in the majority the view of the senior Judge was to prevail, while on the other hand section 98 of the Code of Civil Procedure contained a provision that where a Bench consisting of two Judges while hearing an appeal was faced with a difference of opinion between the Judges, on a point of law, they had to state the point and refer the matter and the appeal was then

to be heard on that point only by one or more other Judges, in accordance with whose opinion the appeal was to be disposed of.

In the Bombay High Court a curious situation had arisen in a Letters Patent appeal against the decision of a Single Judge. On a difference of opinion between two Judges constituting a Bench the matter was referred to two other Judges, against whose decision an appeal was filed before the Privy Council. It was contended by the appellant before the Judicial Committee that the procedure adopted by the High Court in referring the matter to two other Judges was *ultra vires* and vitiated their decree, as the provisions contained in section 98, C. P. C. did not control the provision in the Letters Patent with regard to the prevalence of the opinion of the Senior Judge. The contention prevailed and relying upon an Allahabad decision reported in ILR 26 Alld. 10 the Privy Council advised His Majesty to set aside the decree passed by the Bombay High Court and the case was remanded to the High Court for decision according to law.*

In accordance with the Report of the Civil Justice Committee, the Govt. of India, in 1925, suggested that section 98, C. P. C. should be amended so as to include Second Appeals. The committee did not propose any alteration of the Letters Patent. The opinion of the learned Judges of this court was sought on the question of amending either sec. 98 or the Letters Patent to bring them in conformity with each other.

The opinion of the majority of the judges was, firstly that there should be a uniform provision for Letters Patent appeals and appeals governed by the Code of Civil Procedure and further that Judges should have power to refer question both of fact as of law.

*48 Indian Appeals 181.

Secondly the rule contained in the Letters Patent, to the effect that if Judges differed amongst themselves the decree of the trial Court would prevail, should be deleted as it might lead to a travesty of justice e.g. in some cases the Judges may be agreeing to modify the decree, but there might be a difference as to the nature of the modification. The recommendations of the Judges were accepted and on 9-12-1927 the Letters Patent were amended. Clauses 10 and 27 were deleted and replaced by new clauses. As a result of the amendments Special Appeals from judgments in Second Appeals were permissible provided leave was granted for such appeals, though previously appeals could be filed without leave. Further Special appeals, in case of difference of opinion amongst the Judges divided equally, and where the differing Judges did not constitute a majority of the strength of the High Court, were abolished and, last but not the least, the original rule of prevalence of the opinion of the Senior Judge was abolished and in the new rule a reference to a larger Bench was provided for, though the differing Judges were also to be included in the latter Bench. Time had shown the foresight of Justice Mahmood who had correctly predicted the anomaly of clause 27 of the Letters Patent. It is gratifying that posterity had accepted his valuable suggestion.

Upon the retirement of Sir Grimwood Mears in 1932 Sir Shah Mohd. Sulaiman took over as Chief Justice. Besides his undoubted brilliance, he had the distinction of being the first Indian to be appointed as Chief Justice of this Court and probably the second in India the first being Sir Shadi Lal in Lahore High Court. Sir Shah Sulaiman later adorned the Bench of the Federal Court and enjoyed the distinction of belonging to the first batch of judges of that court.

The Government of India Act, 1935 vested all the High Courts

with the power of superintendence over the subordinate courts and Tribunals, within their territorial jurisdiction. This power is now embodied in Art. 227 of the Constitution.

On the 24th July, 1935 His Excellency the Viceroy, Lord Willingdon, visited the High Court and a welcome address, in his honour, was presented to him in the Chief Justice's Court.

In 1937 on the elevation of Sir Shah Mohd. Sulaiman to the Federal Court, Sir John Gibb Thom became the Chief Justice. He was a great champion of the independence of Judiciary. During his time the Chief Secretary made the mistake of sending a Circular letter to the various Sessions Judges in U. P. commenting upon the adverse effect on the administration by the frequent grant of bails. Being in a fix, a Sessions Judge forwarded the letter to the High Court for advice. The matter was taken up by Chief Justice Thom who made a very strong objection asking the Government to withdraw the letter and send an apology from the Chief Secretary within a week failing which he would be liable for contempt of Court. The Chief Secretary immediately withdrew the letter and tendered an apology.

Amalgamation of Avadh Chief Court with the High Court

After the attainment of independence by India, the historical anomaly of existence of the two highest courts of appeal within the same Province, the territories known as Agra and Avadh having come under one local Government as far back as the year 1902, was keenly felt. By the U. P. High Court Amalgamation Order, 1948, the Chief Court of Avadh was amalgamated with the High Court of Allahabad and the new High Court was conferred the jurisdiction of both the Courts so amalgamated. The Chief Justice

of the Allahabad High Court, Sri B. Malik was appointed the Chief Justice of the new High Court and the Chief Judge and the Judges of the Avadh Court were appointed Puisne Judges of the new court. Shri Ghulam Husain, who was later elevated to the Supreme Court, was the Chief Judge of the Avadh Court at the time of the amalgamation. By the Amalgamation Order the jurisdiction of the Court under the Letters Patent and that of the Chief Court under the Avadh Courts Act was preserved. The seal of the new Court was to be provided by the Chief Justice, but the laws in force immediately before with respect to the forms of writs and other processes used by the High Court at Allahabad, with necessary modifications were adopted by the new High Court. By section 14 of the order it was provided that the new High Court and the Judges were to sit at Allahabad or at such other places as the Chief Justice with the approval of the Governor might direct, provided however, that two Judges at least were to sit at Lucknow, unless the Governor with the concurrence of the Chief Justice, was to direct otherwise. The power of directing any case or class of cases arising in the territory of Avadh to be heard at Allahabad was reserved to the Chief Justice. There was no corresponding provision for transferring cases to Lucknow Bench.

On the 26th July, 1948 an impressive ceremony took place at Allahabad to commemorate the amalgamation of the two courts, at which the Governor, Smt. Sarojini Naidu, the Chief Minister Shri G. B. Pant, Hon'ble Lal Bahadur Shastri, the beloved Late Prime Minister, the Judges and the ex-Judges of our High Court were present. Dr. Sachidanand Sinha, President of the Constituent Assembly was prevented by his ill-health from attending the ceremony but the glowing warmth of his feelings is visible in his message running as follows :

“But as seniormost Advocate enrolled in 1896, I may be permitted to offer you and to your Hon’ble colleagues my heartiest felicitation on this historic occasion and to convey my best wishes for maintaining highest judicial traditions.”

Pt. Jawahar Lal Nehru could not forget his association, paternal and personal with this Court. He had been on the rolls of this High Court, but the demands of the recently assumed office of Prime Ministership of India did not permit his personal presence on that occasion. In his message while contrasting the tendency of disintegration growing in certain other States, he observed :

“Contrary to this general trend we have a process of unification in the United Provinces where the High Court at Allahabad and the Chief Court at Lucknow are being amalgamated to form a single powerful High Court in the whole Province”

Though in Allahabad, Sir Tej Bahadur Sapru, on account of his continued illness, was incapacitated from adding grace to the function.

After the messages sent by various distinguished and eminent personages had been read out by the Registrar, the Advocate General, Shri P. L. Banerji, who was the doyen of the Allahabad Bar, nay a prize of the entire legal profession, delivered a brilliant speech which was followed by the address of the Chief Justice. In the afternoon of 26th July, the first meeting of the Judges of the amalgamated High Court took place.

Amalgamation of Rampur, Banaras and Tehri-Garhwal

In July, 1949 the States Merger (Governors’ Provinces) Order, 1949 was passed which was, in November, amended by the States Merger (United Provinces) Order, 1949, whereby the powers of the

Government of some Indian States specified in the Schedule, which had vested in the Dominion Government were transferred to the adjoining Governors' Provinces. In Schedule VII, Rampur, Banaras and Tehri-Garhwal were the States specified, and by sec. 3 the said States were to be administered in all respects as if they formed part of the absorbing province.

As a necessary corollary, the Merged States Laws Act was passed by the Governor General in Council. By this Act various enactments specified in the schedule were made applicable to the merged States.

As for the local laws the U. P. Merged States (Application of Laws) Act, 1950 was passed on the 16th March, 1950. This Act replaced the U. P. Merged States (Application of Laws) Ordinance, 1950 whereby certain laws had been extended to the merged States of Banaras, Rampur and Tehri-Garhwal, administered as part of Uttar Pradesh. The jurisdiction of the Allahabad High Court was extended to the merged State of Rampur by sec. 12 of the States Merger Order. The Ijlas-i-Humayun, which was the Privy Council presided over by the Ruler, the High Court of Rampur and the Civil Courts were abolished and all proceedings pending in the Ijlas-i-Humayun stood transferred to the Allahabad High Court, while the proceedings pending before the High Court of Rampur stood transferred to the District Judge, Rampur.

In the case of Banaras the Governor, on the 30th November, 1949 under the authority delegated to him by the Central Government issued the Banaras State (Abolition of Privy Council and Chief Court) Order, 1949 whereby these courts in the Banaras State were abolished and all the appeals and other proceedings pending before these courts stood transferred to the Allahabad High Court. The subordinate courts were substituted by other district courts by means of a separate order.

Similarly the jurisdiction of Allahabad High Court was extended to Tehri-Garhwal by the Tehri-Garhwal (Abolition of Huzur's Court and High Court) Order, 1949 and the pending appeals were transferred to the Allahabad High Court.

The Republic Day Celebrations on the 26th January, 1950 could not be held on a scale which justified the occasion as the Judges of this Court had gone to Lucknow to take oath. However, the first anniversary of the Republic of India was celebrated on a very grand scale on 26th January, 1951. Chief Justice Simmons of the Supreme Court of Nebraska, U. S. A., visited the High Court in August, 1953.

The work in this High Court was increasing beyond proportions and the question of appointment of Additional Judges was pressing not only the High Court but the Government of the State. The building which was originally built for 7 Judges could hardly serve the need of a High Court the maximum strength whereof was prescribed by the Constitution to consist of 24 Judges. The sanctioned strength in the year 1954 was of 22 Judges and times were not far ahead when both the maximum strength and the sanctioned strength of the High Court was to be increased, as was in fact done. It was in the fitness of things that the High Court building should have been extended. The growth in numbers was not confined to the Bench. The High Court Bar continued to swell by new entrants. The few chambers which were allotted to the lawyers and the small halls given to the three Associations of the Bar were hardly able to cope with this increase.

As a result of the co-operation of the Chief Minister, Sri Govind Ballabh Pant, extensions were made in the High Court building with the result that the High Court could be proud of having 17 court rooms including the magnificent

new Centre Court known as the Chief Justice's Court and 25 Chambers for Judges. Besides a new Judges' Library and a meeting hall which is situate by the side of the Chief Justice's Chamber, for deliberations amongst the Judges was also provided for.

The opening ceremony of the new Wing of the High Court was performed by Dr. Rajendra Prasad, President of India and in the Chief Justice's Court, a welcome address on behalf of the Judges was presented by the Chief Justice. Then followed the welcome speech on behalf of the Bar delivered by Sri K. L. Misra, Advocate General, who after paying rich encomiums to the President pointed out that not only was the Chief Justice's court room largest in Asia, but the State over which the High Court administered justice was the largest State in the country.

Reminded of the past when he himself used to frequent courts Dr. Rajendra Prasad observed in his speech that it was a matter of deep satisfaction to him to be in the midst of the lawyers and the Judges and to see some faces which were familiar to him.

On the retirement of Shri B. Malik, Shri O. H. Mootham, now Sir O. H. Mootham was appointed as Chief Justice. He was the last Englishman to be the Chief Justice of this High Court. His association with this court has not ceased even after his retirement and he still continues to send New Year greetings to the High Court and the Bar. His genial temperament and judicial outlook will long be remembered by all who came in contact with him. He, it must be said, was very anxious to reduce the arrears in this court and adopted various measures for the same.

An episode of some interest might be narrated at this juncture. The oath taking ceremony of a Chief Justice had been invariably held at Allahabad. Sir Grimwood Mears and other Chief Justices had been administered oath in open court at Allahabad and in deed the

Governor had himself come to Allahabad for administering oath to Sir S. M. Sulaiman and Sir Iqbal Ahmad and again to Chief Justice B. Malik. Upon the amalgamation and re-orientation of this Court in 1948 oath was given at Allahabad by Smt. Sarojini Naidu, the Governor. A departure was made by the Governor, when Chief Justice Mootham had to be sworn and it was proposed to hold the ceremony at Government House at Lucknow. The Bar of this court made a representation against this proposal to the President of India. The Bar Library even passed a resolution on January 10, 1955 protesting against this proposal and prohibiting its office bearers from joining the function at Lucknow. The views of the Bar, did not go unheeded but since the ceremony had already been fixed it was held at Lucknow. However, when the occasion recurred at the appointment of Mr. Justice Desai in February, 1961 as the Chief Justice, the Governor authorised Mr. Justice V. Bhargava who was the seniormost Puisne Judge to administer oath to him.

In December, 1956 the Law Commission of India chose Allahabad as the venue for its sitting. The Commission had co-opted two eminent lawyers from this State, namely Shri Kirpa Narain of Agra and Shri Jagdish Sarup of Allahabad. Various Judges and lawyers of this Court were interviewed and after deliberations the Commission submitted a detailed report suggesting reforms in the sphere of law from the University up to the Central Government.

Lord Denning, in his tour of India included a visit to our High Court. A warm welcome was given to him by Chief Justice Mootham and the Judges as well as the Bar of this Court.

In February 1961 Mr. Justice Desai was appointed as the first I. C. S. Chief Justice of this Court. In his time the largest number of appointments to the Bench, numbering twenty-five were made. On

his appointment as Chief Justice, Shri K. L. Misra, Advocate General in his welcome address on behalf of the Bar, said :

“ My Lord, I cannot help remarking on this occasion that in the long history of this court you are the first member of Indian Civil Service to become Chief Justice. The Indian Civil Service when it was the steel frame of a foreign rule carried with it both glory and the stigma of that foreign rule. But because of the large number of Judicial appointments even in the highest courts, the Indian Civil Service in the days of its departure is becoming the steel frame of the administration of justice in India. ”

The Rules of this Court had preserved the provision of the Letters Patent permitting a Special Appeal against the decision of a single judge hearing a Second Appeal provided he certified it as a fit case for further appeal. It was a beneficent provision and had seldom been misused. Litigation in the Supreme Court being far too expensive for the average citizen, the necessity of this remedy was self-evident. In 1962 by the U. P. High Court (Abolition of Letters Patent Appeals) Act XIV of 1962 such Special Appeals were abolished and the prohibition extended even to those Second Appeals which were pending in the Single Judge jurisdiction at the time of the enforcement of the Act. However, inconvenienced one may feel, the wisdom of our Legislature is, I suppose, not open to doubt.

The historic controversy that had arisen over the jurisdiction of the High Court to examine the validity of punishments imposed by the Legislature for its contempt, deserved a detailed mention. The necessity has been diminished by the opinion of the Supreme Court, given under Art. 143 of the Constitution. The controversy is also too recent for inclusion in a historical introspection.

Every now and then we find a wave of concern in the minds of

people about the arrears in this court. Perhaps it would not be out of place to remind them of the size of this State with the highest population in India, of the number of big cities, the comparative uneven distribution of wealth, the increasing activities of the State and their continuous impact on the life of the citizen and the consequent volume of work which finds entry into the High Court every year. Without encumbering this article with statistics, I might mention that as many as twenty-two Courts are now working at Allahabad and another six at Lucknow. Day in and day out, the Judges toil, with the co-operation of Bar to bring down the graph. The progress made, to say the least, is not disappointing.

Upon the retirement of Chief Justice Desai in February 1966, Sri Justice V. Bhargava succeeded him. On his elevation to the Bench of the Supreme Court in August 1966, however, he parted company with us.

At the close of the hundred years of the High Court Mr. Justice Nasirullah Beg was sworn in as Chief Justice. The close of a century is seldom so closely followed by the emergence of new ideologies. The concept of a joint partnership with equal rights and responsibilities, between the Bench and Bar, though professed often times, was never before ushered into the domain of reality. Happily enough, the disappointment of yesterday is now the hope of tomorrow and nothing better justifies our optimism than the assurance of Chief Justice Beg conveyed in the following words :

“I shall make an attempt to convert my cherished dream of administration of justice as being a joint partnership between the Bench and the Bar into a living reality I also propose to constitute an Inspection Committee consisting jointly of Judges and lawyers and the Registrar. This Committee shall be entrusted with the task of

supervision of the staff of this Court. Lawyers being in constant touch with the members of the staff would be in the best position to point out their deficiencies and suggest remedies for the same.” *

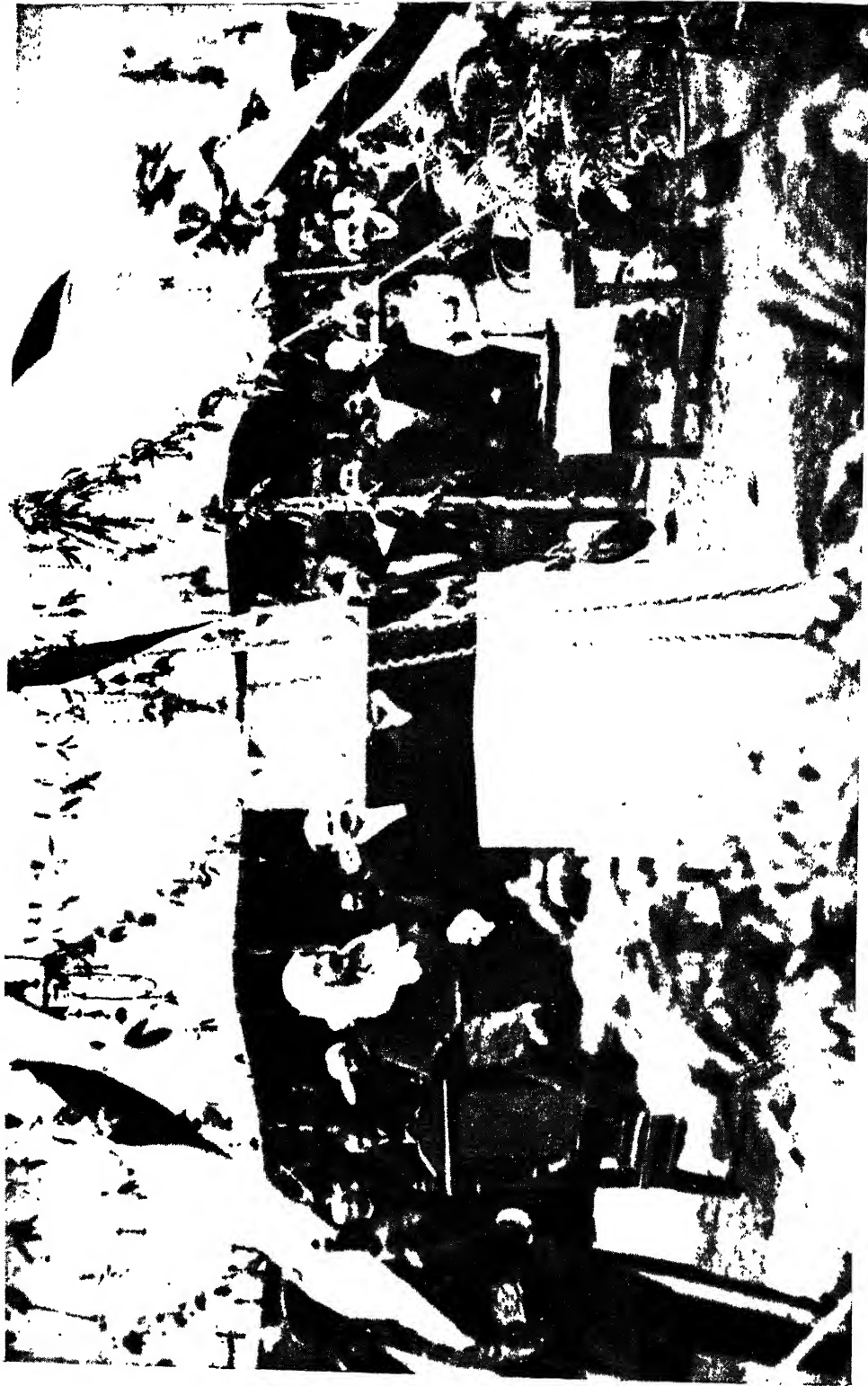
Let us hope that something sublime would emerge from the combination of the two limbs; something that would make both, the worthy human agents of the Supreme Dispenser of Justice. Our destination is the same and so is our bridge to reach it.



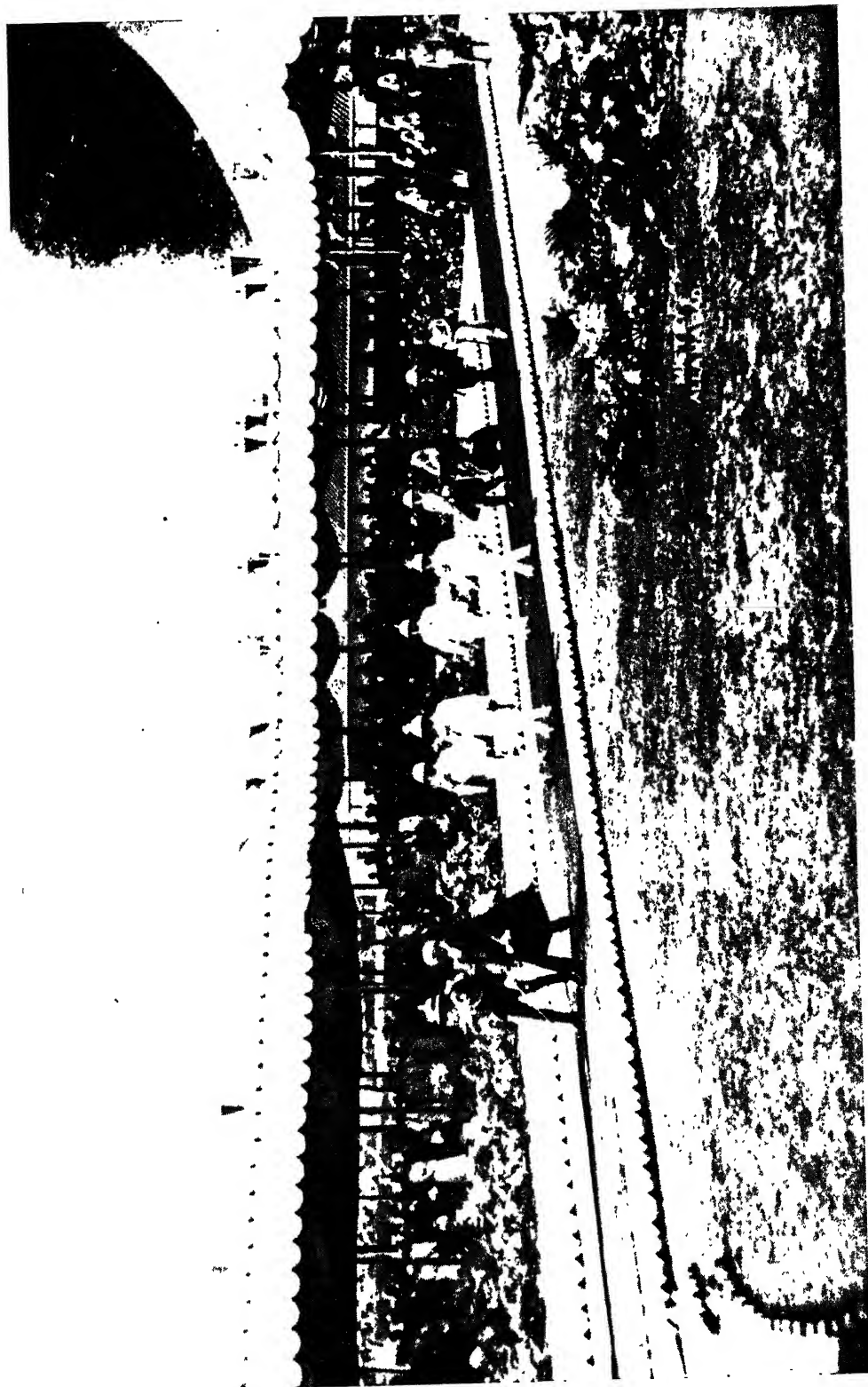
*Speech delivered by the Chief Justice on the 24th of September, 1966 at the Oath taking ceremony.



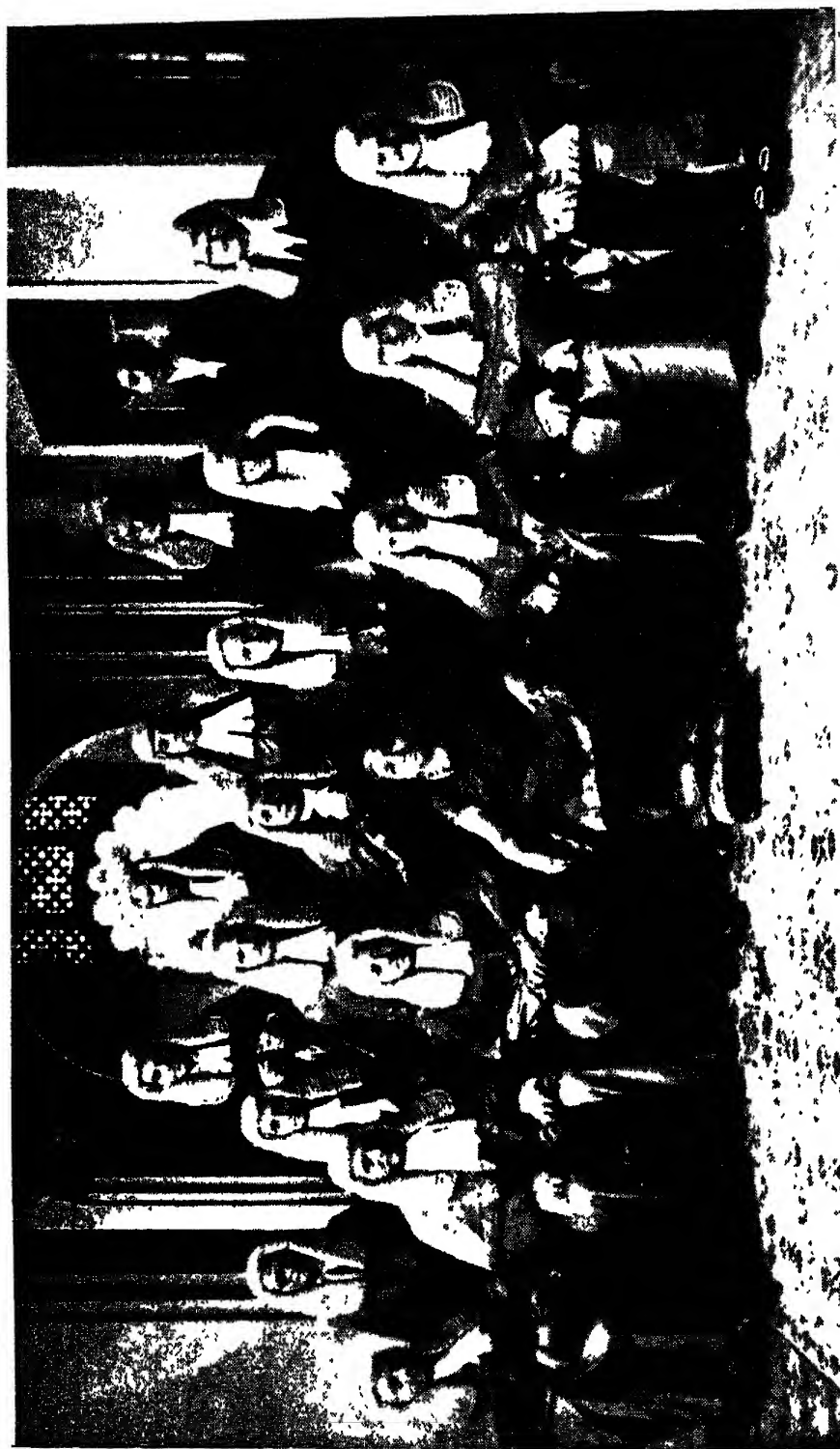
PHOTOGRAPH TAKEN ON THE RETIREMENT OF SIR COMER PETTIRAM, CHIEF JUSTICE, IN 1886



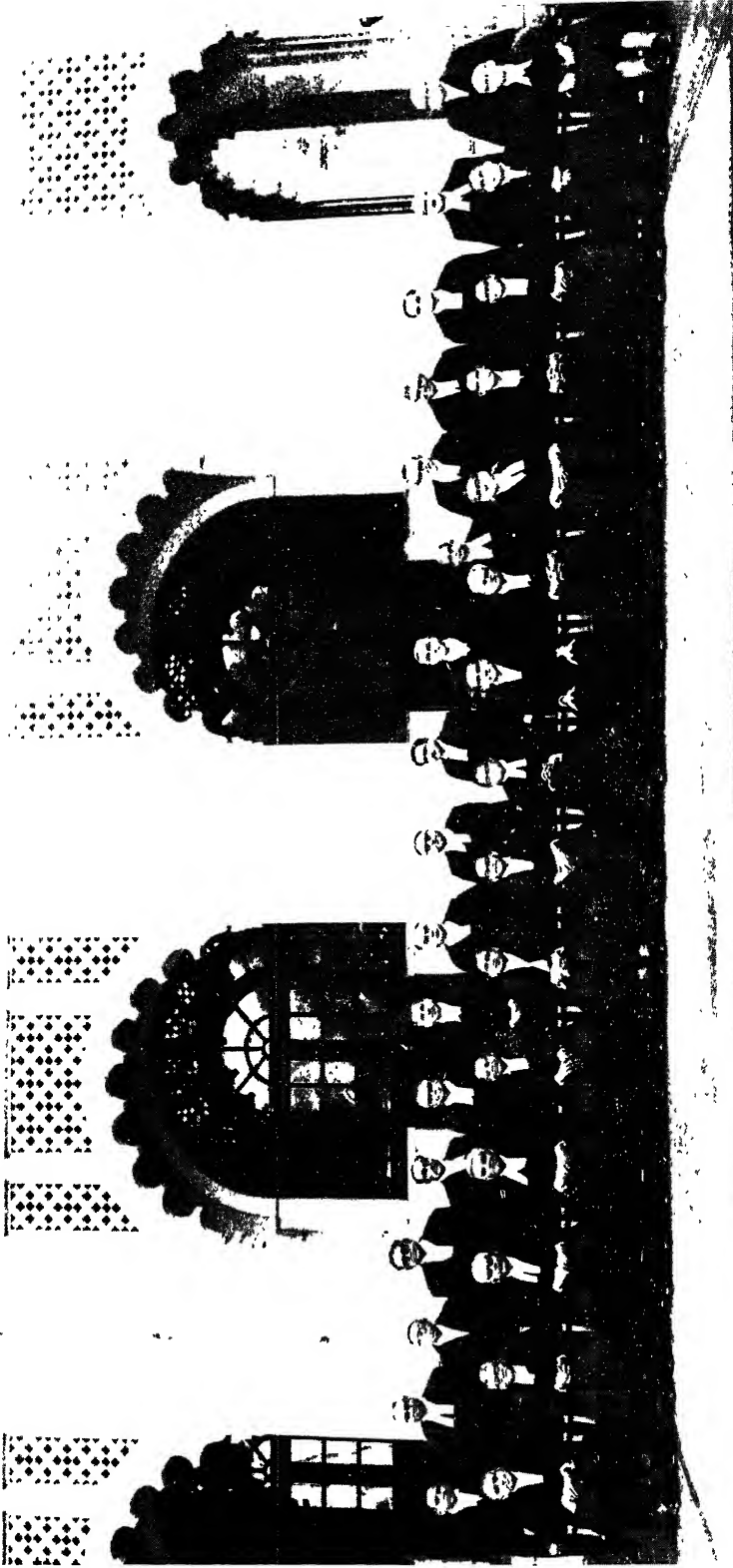
PHOTOGRAPH TAKEN ON THE OCCASION OF FOUNDATION LAYING CEREMONY OF THE PRESENT HIGH COURT BUILDING
BY SIR JOHN STANLEY, CHIEF JUSTICE, IN 1911



PHOTOGRAPH TAKEN ON THE OCCASION OF THE OPENING CEREMONY OF THE PRESENT HIGH COURT BUILDING ON
NOVEMBER 26, 1916, BY LORD CHIEF JUSTICE, VICE-CHIEF JUSTICE AND GOVERNOR GENERAL.



PHOTOGRAPH TAKEN AT THE TIME OF AMALGAMATION OF THE CHIEF COURT
OF OUDH WITH THE HIGH COURT, ALLAHABAD



PHOTOGRAPH TAKEN ON THE RETIREMENT OF HON'BLE MR. M. C. DESAI, AND ON THE APPOINTMENT OF
HON'BLE MR. V. BHARGAVA, AS CHIEF JUSTICE, HIGH COURT, ALAHABAD

The 'Judges in the English Department'

Subsequently known as

'Judges in the Administrative Department'

By

SRI K. P. MATHUR

Retired Judge, High Court of Judicature at Allahabad

THE Judge, incharge of the executive and administrative business of the High Court and the courts subordinate thereto is designated as the 'Judge in the Administrative Department.' This designation was adopted after the amalgamation of the Chief Court of Avadh with the High Court of Allahabad in 1948. Before that, such a Judge was known as the 'Judge in the English Department'. Before amalgamation, the meeting, at which the executive and administrative business of the Court was transacted, was known as the English Meeting, and all the Judges present in Court on the day of the meeting used to attend it. The term 'English Meeting' appears to have been adopted for the reason

that the executive business of the Court mainly consisted of dealing with English correspondence and issuing of orders and circulars in English for the direction of subordinate courts.

After amalgamation it was considered that it would not be convenient for the Judges at Lucknow to attend such meetings. Another reason, I think, was that the number of Judges had greatly increased. Consequently the Chief Justice constituted a Committee of seven Judges to transact the executive and administrative business of the Court and designated it as the Administrative Committee. Whenever a meeting of all the Judges is called, it is known as the Judges' Meeting.

Originally, when the number of Judges of the Court was small, no one Judge was incharge of the executive and administrative business of the Court and the papers relating to such business used to be circulated amongst all the Judges. It was in 1880 that Mr. Justice Robert Spankie made a suggestion that one Judge may be placed incharge of the executive and administrative business of the Court. In his note, dated 22nd January, 1880 he pointed out that 'a number of letters and applications were circulated daily amongst all the Judges regarding which even one member of the Court could pass satisfactory orders and thereby dispose of them without injury to the public service or prejudice to the Court'. He suggested that the English correspondence before circulation to all the Judges should be laid before an English Business Committee of the Court and the Committee might dispose of the ordinary matters without reference to other members of the Court and should circulate only those matters on which opinion of all the Judges appeared to be desirable. It was further suggested that the Committee might consist of two Judges. This note was circulated to all the Judges of the Court for opinion. Mr. Justice Douglas Straight gave the opinion that

there was much force in the suggestion made in the note and desired the matter to be discussed at an English Meeting called for the purpose. Other Judges also agreed with the opinion of Mr. Justice Douglas Straight. Sir Robert Stuart, Chief Justice, agreed that the question may be discussed at an English Meeting but added that the proposed arrangement might not work well.

In the High Court office the earliest recorded minutes of an English Meeting that are available are of the meeting that was held on 6th May, 1886 (Minutes of the English Meeting, Vol. I, p.1). Consequently it could not be said with certainty whether any meeting was called for purposes of considering Mr. Justice Spankie's note and if so, when and what decisions were taken thereon. A note, dated 30th August, 1887 of Mr. Thomson, the then Registrar, however, throws some light on the subject. Mr. Thomson mentions in his note that at the time when he came to the Court (he was appointed Registrar on 2nd June, 1884) Mr. Justice Oldfield was incharge of the English business. At another place in the same note Mr. Thomson says that 'there does not seem to have been any regular resolution recorded at the time when the present system of disposing of English business was in 1880 substituted for the former practice in which all papers were circulated to all the Judges.' It is thus clear that it was in 1880 that the system of placing one Judge incharge of the executive and administrative business of the Court (which was at that time known as English business) was introduced. Although there is no formal resolution to that effect, it can be safely assumed that a meeting must have been called for the purpose of discussing Mr. Justice Spankie's note, and there it was decided to give the proposal of Mr. Justice Spankie a trial without formally adopting it in the form of a resolution. This position is further confirmed by

minute, dated 11th August, 1887 recorded by Mr. Justice Mahmood wherein he observed that 'the view expressed by Mr. Justice Spankie in his minute of 22nd January, 1880 suggesting a committee of two Judges has never been the subject of consideration by the whole Court, and there is, therefore, no delegation of authority by the Court to any one or more of its members for disposal of what is technically called "English business" and there is, therefore, no specification of the powers of one of the members of the Court to dispose of such business on behalf of the whole Court without consulting the other members of the Court.'

These notes make it clear that the first Judge in the English Department was Mr. Justice Oldfield. He was placed incharge of executive and administrative business of the Court in February or March, 1880. No formal resolution was recorded at a meeting of the Judges (English Meeting) with regard to his appointment. Probably he was placed incharge of the administrative business by way of giving trial to the proposal contained in Mr. Justice Spankie's note.

Mr. Justice Oldfield retired in 1887 and after that Mr. Justice Tyrell was made incharge of the English business of the Court as will appear from an entry, dated 27th October, 1887 over the signatures of Sir Robert Stuart (Chief Justice), Mr. Justice Douglas Straight and Mr. Justice Brodhurst. That entry is to the following effect :

'We shall be obliged if Mr. Justice Tyrell will, so far as we are concerned, conduct the English business of the High Court according to the practice now and for some years past observed. By the English business we mean all correspondence in English language addressed to the Registrar and all returns

and statements not being returns to precepts or judicial orders, or explanations called for by particular Judges or Benches—or references under any Statute or Act or correspondence in which the opinions of all the Judges are specifically required or periodical Sessions Statements or other work assigned to any particular Judge.’

In this entry an attempt was also made to define the term ‘English business of the Court’. We thus see that after Mr. Justice Oldfield the Judge who was placed incharge of the English business of the Court was Mr. Justice Tyrell.

After the above entry in the minutes of 27th October, 1887 Mr. Justice Mahmood wrote out another lengthy minute, dated 28th November, 1887 pointing out that the discussion at the English Meeting of 27th October, 1887 resulting in a resolution whereby the learned Chief Justice, Mr. Justice Straight and Mr. Justice Brodhurst had concurred in delegating their power as to what was called English business to Mr. Justice Tyrell and who was understood to have accepted such delegated authority, was not discussed or framed as a Rule of Court but was simply an expression of personal desire and of personal delegation of authority on the part of the Chief Justice, Mr. Justice Straight and Mr. Justice Brodhurst. Mr. Justice Mahmood emphasised that the resolution was, therefore, not binding on him. Upon this, the Chief Justice ordered that the minute of Mr. Justice Mahmood was to be considered at the next English Meeting to be held on 3rd December, 1887. The Chief Justice also wrote out a note, dated 2nd December, 1887, in which he pointed out that it was his desire that there should be no cause for friction and the work of the Court should be done expeditiously and without wasting judicial strength and time upon other matters which, in other offices, are disposed of by subordinates. He further ordered in his

note that until Mr. Justice Mahmood otherwise directed the Registrar in writing, all the English business of the Court was also to be submitted to him for consideration and orders, and that Mr. Justice Mahmood would take care that the transaction of the English business might not be delayed or the correspondence be allowed to fall into arrears. It was further mentioned in the note that all other Judges have agreed that the English business would be conducted in accordance with the practice of the Court and in accordance with the request contained in the entry of 27th October, 1887 in the minutes over the signatures of the Chief Justice, Mr. Justice Straight and Mr. Justice Brodhurst. At the meeting which was held on 3rd December, 1887 the minute of Mr. Justice Mahmood and the note of the Chief Justice were considered. Except Mr. Justice Mahmood, all other Judges fully approved and accepted the note of the Chief Justice. Mr. Justice Mahmood adhered to his own views that the English business should be referred to all the Judges. He, however, accepted the arrangement ordered by the Chief Justice in his note.

We thus see that from 27th October, 1887 Mr. Justice Tyrell was incharge of the English business of the Court but such business was also referred to Mr. Justice Mahmood for opinion and orders.

The High Court was established by the Letters Patent of 1866. The earliest published Rules of Court are the 'Circular Orders and Circular Letters of the High Court of Judicature, North-Western Provinces, 1866--75.' The next publication of these Rules is of the year 1880. Thereafter, Rules of Court were published in 1882, 1889, 1894 and 1898. The last revision of the Rules was made in 1952. In the Rules, which were published upto 1882, there is no mention of the Judge in the English Department or of the English business of the Court. One of the objections in the minute of Mr. Justice

Mahmood was that the resolution of 27th October, 1887 delegating the power to Mr. Justice Tyrell to conduct the English business of the Court was neither discussed nor framed as a Rule of the Court. For the first time, the provision for the appointment of a Judge in the English Department and the manner in which such appointment was to be made was made in the Rules of Court of 1889. Rules 258 to 271 contain the provisions relating to the executive and administrative business of the Court, the Judge in the English Department and the English Meeting.

The first English Meeting that was held after the promulgation of these Rules was on 3rd January, 1890. At that meeting, Mr. Justice Tyrell was elected to act as Judge in the English Department under rule 259. Mr. Justice Tyrell retired in November, 1894. But there is a resolution dated 2nd May, 1891 on page 66 of Vol. II of the minutes of the English Meeting, appointing Mr. Justice Knox to be the Judge in the English Department. We thus see that Mr. Justice Knox assumed charge of the English Department in May, 1891. Although Mr. Justice Knox retired on 17th January, 1921, it was in the year 1920 that he expressed a strong desire to be relieved of the work of the Judge in the English Department. Consequently, by a resolution passed at the English Meeting of 16th July, 1920, it was unanimously resolved that the resignation of Mr. Justice Knox be accepted and that Mr. Justice W. Tudball be appointed in his stead (vide minutes of the English Meeting, page 305, Vol. V). Thus Mr. Justice Tudball assumed charge of the English Department from 16th July, 1920. He resigned the post of the Judge in the English Department on 5th March, 1921 and on the same date, by a resolution passed at the English Meeting, Mr. Justice Lindsay was unanimously elected in his stead (vide minutes of the English Meeting, Vol. V, p. 339).

No paper is available to indicate the date upto which Mr. Justice Lindsay worked as Judge in the English Department. There is, however, a resolution of the English Meeting of 21st December, 1922, which shows that Mr. Justice Daniels was elected as successor to Mr. Justice Stuart as Judge in the English Department during Mr. Justice Stuart's absence at Ambala to settle the Patiala-Nabha dispute. This shows that Mr. Justice Stuart was working as Judge in the English Department since before December, 1922. He was appointed a permanent Judge of the Court in October, 1922. We can, therefore, take it that he was made a Judge in the English Department about November, 1922. Thus, the period of Mr. Justice Lindsay as Judge in the English Department would be from March, 1921 to November, 1922.

Mr. Justice Stuart was Judge in the English Department from November, 1922 to 21st December, 1922. Mr. Justice Daniels was elected as Judge in the English Department on 21st December, 1922. He worked in that capacity till June, 1923 when Mr. Justice Stuart returned from special duty. Thus, from July, 1923 Mr. Justice Stuart again became Judge in the English Department and remained so till 19th October, 1925 (vide marginal note in the personal file of Mr. Justice Daniels). From 19th October, 1925 Mr. Justice Daniels again took charge of the work of the Judge in the English Department and continued in that capacity up to 18th October, 1926 when he proceeded on long leave. On 18th October, 1926 Mr. Justice Dalal was appointed Judge in the English Department as a result of the resolution of the English Meeting. Mr. Justice Dalal occupied that post till April, 1930 when he resigned. By a resolution, dated 4th April, 1930, Mr. Justice Kendall was appointed Judge in the English Department and he continued upto 9th May, 1935. On 10th May, 1936 he died as a result of car

accident. Then, by a resolution dated 20th July, 1935, Mr. Justice Bennet was elected to act as Judge in the English Department. He worked in that capacity upto July, 1940 when he proceeded on leave preparatory to retirement. After that, Mr. Justice Allsop was appointed Judge in the English Department from July, 1940 and he continued to hold that post upto January 1, 1947.

By an unanimous resolution dated 20th January, 1947, Mr. Justice B. Malik was appointed to act as Judge in the English Department. He continued to work as such till 16th December, 1947. By a resolution dated 16th December, 1947, Mr. Justice Raghubar Dayal was unanimously elected to act as Judge in the English Department. Early in the year 1949, he expressed his unwillingness to continue to work in that capacity. Thereupon Mr. Justice Wanchoo was appointed as Judge in the Administrative Department from February 26, 1949. He worked in that capacity until 23rd December, 1950 when he was translated as Chief Justice of the Rajasthan High Court. By a resolution, dated 23rd December, 1950 at a Judges' Meeting, it was unanimously resolved that Mr. Justice Harish Chandra be appointed as Administrative Judge. He continued to work as such till his retirement on September 14, 1954. By a resolution, dated September 14, 1954, Mr. Justice M. C. Desai was unanimously elected as Administrative Judge, who continued to work in that capacity till February, 1958. Thereafter Mr. Justice Vashishtha Bhargava was elected to act as Judge in the Administrative Department and he continued to work as such till November 12, 1964 when, by a resolution of that date, Mr. Justice Jagdish Sahai was unanimously elected as Administrative Judge.

The list of 18 Judges who have been incharge of the Executive and Administrative business of the Court is as follows :

Hon'ble Sir Richard Charles Oldfield, C. S., from March, 1880 to October, 1887.

Hon'ble Mr. Justice William Tyrell, C. S., from October, 1887 to May, 1891.

Hon'ble Sir George Edward Knox, I. S. O., I. C. S., from May, 1891 to July, 1920.

Hon'ble Sir William Tudball, I. C. S., from July, 1920 to March, 1921.

Mr. Justice Benjamin Lindsay from March, 1921 to November, 1922.

Hon'ble Sir Louis Stuart, C. I. E., I. C. S., from November, 1922 to December, 1922.

Hon'ble Sir Sidney Reginald Daniels, I. C. S., from December, 1922 to June, 1923.

Hon'ble Sir Louis Stuart, C. I. E., I. C. S., (again) from July, 1923 to October, 1924.

Hon'ble Sir Sidney Reginald Daniels, I. C. S., (again) from October, 1924 to October, 1926.

Hon'ble Sir Barjor Jamshedjee Dalal, I. C. S., from October, 1926 to April, 1930.

Hon'ble Sir Charles Henry Bayley Kendall, I. C. S., from April, 1930 to May, 1935.

Hon'ble Sir Edward Bennet from July, 1935 to July, 1940.

Hon'ble Sir James Joseph Whittlesea Allsop, I. C. S., from July, 1940 to January, 1947.

Mr. Justice Bidhubhushan Malik from January, 1947 to December, 1947.

Mr. Justice Raghubar Dayal, I. C. S., from December, 1947 to February, 1949.

Mr. Justice Kailash Nath Wanchoo, i. c. s., from February, 1949 to December, 1950.

Mr. Justice Harish Chandra, i. c. s., from December, 1950 to September, 1954.

Mr. Justice Manulal Chunilal Desai, i. c. s., from September, 1954 to February, 1958.

Mr. Justice Vashishtha Bhargava, i. c. s., from February, 1958 to November, 1964.

Mr. Justice Jagdish Sahai from November, 1964.




The History and Role of Subordinate Civil Judiciary in Uttar Pradesh

By

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 HE Subordinate Civil Judiciary in this State at present consists of—

1. District and Sessions Judges	*44 ¹
2. Civil and Sessions Judges	...	...	...	40 ¹
3. Civil Judges	...	...	...	65 ¹
4. Munsifs	...	...	...	205 ¹
5. Nyaya Panchayats	...	...	...	8,662 ²

Prior to the Independence, District Judges were mostly drawn from the Indian Civil Service. A limited few posts, seven out of thirty-seven, were gradually thrown open to the Provincial Judicial Service. A degree of law was not an essential qualification for the Indian Civil Service ; but for the Provincial Judicial Service, it was an essential qualification. On a very few occasions appointment of District Judges was made directly from the Bar. The last such appointment was of Shri Tej Narain

*This number includes 39 District and Sessions Judges in 39 Judgeships, the Registrar, High Court, Allahabad, 1 Judicial Secretary and Legal Remembrancer to Government, Deputy Legal Remembrancer and 2 posts for Deputation Reserve.

¹Vide Civil List, Part I of U. P., corrected up to July 1, 1964.

²Vide p. 51 of the Report on the Administration of Justice in U. P. for 1962.

Mulla in about the year 1920. After the Independence, the Indian Civil Service was replaced by the Indian Administrative Service. Recruitment to the cadre of District Judges from the Administrative Service thereupon stopped and for a few years all the vacancies in District Judgeships were filled from the cadre of Provincial Judicial Service. In April, 1953, the Uttar Pradesh Higher Judicial Service Rules were promulgated. This Service was to consist of District and Sessions Judges, Civil and Sessions Judges. The strength of the Service and each class of posts therein were to be determined by the Government* from time to time in consultation with the High Court. The scale of pay to the members of the Service were:

(i) For Civil and Sessions Judges : Rs.600—50—800—50—1,200 per mensem with an efficiency bar at Rs.800.

(ii) For District and Sessions Judges : Rs.800—50—1,000—75—1,750—50—1,800 per mensem.

Recruitment to the Service are made to the post of Civil and Sessions Judges by—(i) promotion from the members of the U. P. Civil Service (Judicial Branch), and (ii) direct recruitment after consultation with the High Court from—

(a) Barristers, Advocates, Vakils, or Pleaders, of more than seven years' standing.

(b) Judicial Officers, viz. those exercising Magisterial and Revenue powers, who have put in a minimum of seven years' service as such.

The Supreme Court has now held, in *Chandra Mohan vs. State of U. P.*, reported in 1966 A. L. J. 778, the Higher Judicial Service Rules to be unconstitutional. It has thrown a very important portion of the service out of gear. New Rules for recruitment to the Higher Judicial Service are bound to be framed and promulgated.

Civil Judges and Munsifs constitute what is called the U. P. Civil Service (Judicial Branch). The strength of the Service and of

each kind of posts therein is to be determined by the Governor from time to time. Recruitment is made on the result of a competitive examination conducted by the U. P. Public Service Commission. No person is to be recruited, who is more than 27 years or less than 22 years of age on the first day of January next following the date of announcement of the examination by the Commission for recruitment to the Service. A candidate must be either a Bar-at-Law or hold a degree in Law from a University established by Law or be entitled to practice in the High Court or in the Courts subordinate thereto. A condition of two years' practice at the Bar was deleted in 1958. Initially appointments are made to the post of a Munsif. Civil Judges are appointed from among the Munsifs by promotion. The time-scale of pay of the Service now is Rs. 250—25—400—30—700—50—850 with efficiency bars at Rs. 490 and Rs. 640. Although Civil Judges perform far more responsible work than Munsifs, they have no separate grade, nor are they given any special pay.

The organisation and jurisdiction of the civil courts in this State is governed by the Bengal, Agra and Assam Civil Courts Act, XII of 1887. The pecuniary jurisdiction of District Judges and Civil Judges is unlimited, while that of Munsifs is up to rupees five thousands only. District Judges have special jurisdiction under certain Acts and try certain special kinds of suits, e.g. cases under the Land Acquisition Act or suits relating to public and charitable trusts. District Judges can hear appeals from the judgments of Civil Judges in suits up to a particular valuation and revisions from the decisions of the Court of Small Causes. In certain cases, appeals from Revenue Courts also lie to the District Judge. All appeals from Munsifs lie to the District Judge but can be heard also by Civil Judges when transferred to them by the District Judge.

Nyaya Panchayats were established in this State by the U. P. Panchayat Raj Act, 1947 (U. P. Act XXVI of 1947); and there are

now nearly 9,000 Nyaya Panchayats in the State. In 1962, the number of suits instituted in the Nyaya Panchayats was 49,164. They have jurisdiction in Civil, Criminal and Revenue cases, and can try civil suits (a) for money due on contracts other than a contract in respect of immovable property, (b) for recovery of movables or for value thereof, (c) for compensation for wrongfully taking or injuring movable property, and (d) for damages caused by cattle trespass. Cases against the State or Central Government or against public servants, for acts done in their official capacity, or against minors or lunatics or for balance due on partnership account or for a share under an intestacy or a legacy are barred from their jurisdiction. Legal practitioners cannot appear before them. On an application of any of the parties, and after notice to the opposite party, the Munsif of the territorial area may, in a case pending before, or decided by, any Nyaya Panchayat, withdraw and dispose of the same or transfer it to another Nyaya Panchayat or pass such order as may be just.

The Sub-divisional Officer, after inviting nominations from Gram Panchayats concerned and scrutinizing them, forwards the same to the District Magistrate who, after consulting the advisory committee concerned, appoints Panches of the Nyaya Panchayat. Subject to a minimum of ten and maximum of twenty-five, every Nyaya Panchayat shall have such number of members as may be prescribed. Every person nominated for membership of the Nyaya Panchayat must be a member of Gram Panchayat, be able to read and write Hindi and be at least thirty years of age. On appointment to the Nyaya Panchayat, he ceases to be a member of the Gram Panchayat. The Panches so appointed elect a Sarpanch and a Sahayak Sarpanch from amongst themselves. For the disposal of cases the Sarpanch constitutes Benches of five Panches each. The distribution of cases between the Benches are made by allotting cases to Benches in serial order.

The entire original Civil work, except a very few cases, which may be transferred to the High Court in the exercise of its Extraordinary Original Civil jurisdiction, and first appeals from Munsifs and Civil Judges and revision applications against the decisions of the Courts of Small Causes and Nyaya Panchayats, are done by the Subordinate Civil Judiciary. The institution of original suits in Civil Courts in 1962 was 71,912. 16,038 regular appeals and 3,880 miscellaneous appeals were instituted during the year. Apart from this, there was election, insolvency, execution and miscellaneous work before the courts. This gives a broad idea of the volume of work done by the Subordinate Civil Courts. It is unnecessary to quote the figures of each type of work. The annual reports of the administration of civil justice give them in detail.

Although the separation of the judiciary from the executive is one of the directive principles of State Policy, according to Article 50 of the Constitution of India, the separation is complete only in civil cases, inasmuch as the presiding officers of civil courts are under the supervision and control of the High Court under Articles 233 to 236 of the Constitution. Broadly speaking, there are at present three classes of courts in Uttar Pradesh : (1) Civil, (2) Criminal and (3) Revenue. The presiding officers of the criminal and revenue courts are under the supervision and control of the Executive Government. No notification under Article 237 of the Constitution, applying the provisions to the Magistracy, has so far been issued.

The Subordinate Civil Judiciary, in Uttar Pradesh, has enjoyed a high reputation for integrity, independence and efficiency. It has received tributes of praise from persons, British and Indian, who were competent to form an opinion. The judiciary received the compliments of Pandit Jawaharlal Nehru, on his release from jail, after the historic fight for freedom in 1942. Earl of Selborne, Lord Chancellor of England, in a speech, delivered in 1883, said

that he had "considerable opportunity of observing the manner in which, in civil cases, the Indian Judges did their duty". He, unhesitatingly, said that "judgments of the Indian Judges bore most favourable comparison, as a general rule, with the judgments of the English Judges". He also said that "in every instance, in respect of integrity, of learning, of knowledge, of the soundness and satisfactory character of the judgments arrived at, the Indian Judges were quite as good as those of the English Judges". Sir Lancelot Sanderson, in a speech delivered in London in June 1927, testified to the work of the Subordinate Judges and said that it had been a great pleasure to him to hear the remarks which had fallen from his colleagues on the Judicial Committee of the Privy Council in regard to the way in which the Subordinate Judges in India did their work. He, particularly, emphasised the care with which the cases were heard, the learning displayed in the judgment and pointed out that the comments of the Judicial Committee revealed that the "best traditions have been maintained in the Courts in India".

Aitchison Commission of 1886, in their report, spoke of the "very great aptitude for judicial office", displayed by Indians, appointed to posts in the subordinate judiciary; and Mr. S. P. Sinha (afterwards Lord Sinha), in his evidence before the Islington Commission, spoke of the "extremely satisfactory work done by the Munsifs and Subordinate Judges."

The Subordinate Civil Judiciary has received similar tributes from persons who were in closer touch with their work. Sir Henry Richards, the then Chief Justice of the Allahabad High Court, in his address, at the opening of the High Court Building by the Viceroy, acknowledged the valuable assistance received from the District Courts and "of the thorough and searching inquiry" made by those courts. Chief Justice Grimwood Mears, inaugurating the fourth session of the U. P. Judicial Officers' Association,

1924, acknowledged, on behalf of the High Court, the ability displayed by the subordinate judiciary and of the "esteem in which the Judges of the High Court held the members of the subordinate judiciary". Chief Justice Sir Shah Muhammad Sulaiman, a few years later, said that the Provincial Judicial Service can take pride in the fact that those of its members who came up to the High Court have proved to be brilliant Judges of great experience, learning and ability. The Provincial Service has produced eminent and distinguished Judges who, for years, "adorned the Bench with lustre, and commanded high respect for their clear thinking, lucid expression and sound judgment".

Sir John Gibb Thom, in his inaugural address to the Eleventh Session of the U. P. Judicial Conference, in 1938, paid a tribute to the efficiency, diligence and high sense of duty of the members of the Subordinate Judicial Service. Similar tributes were paid by two Chief Judges of the Oudh Chief Court in March 1930. Sir Louis Stuart, on the eve of his retirement, pointed out that the work done by the Subordinate Judges, in original cases, was exactly the same as was done by the Judges of the King's Bench and Chancery Divisions of the High Court of Justice in England and spoke of "the rare combination of quick disposal and careful and thorough hearing, given to cases before the Subordinate Judges". In 1933, at the Eighth Session of the U. P. Judicial Officers Association, Sir Saiyed Wazir Hasan, spoke of "independence of judgment, purity of conduct and high sense of duty in dispensation of justice not only between man and man but also between State and its subjects, of the Subordinate Judiciary". In 1946, Hon'ble Mr. Justice Ghulam Hasan, pointed out not only to the efficiency, integrity and devotion to duty, displayed by the members of the service, but also that the service had produced men of whom any judicial system would be proud and that they had left an indelible impress on

the annals of judicial history by their judgments marked, invariably, by legal acumen, industry and ability of a high order.

Mr. Chintamani, while moving a resolution in the U. P. Legislative Council, in 1919, spoke of "conscientious thoroughness with which the Provincial Judicial Officers performed their duties" and who, by "dint of arduous and good work have raised the whole tone of the judicial administration". Sir Tej Bahadur Sapru, as member of the Executive Council of Viceroy, in the Civil Justice Committee Report, said about the Subordinate Judges having reached a high standard of efficiency, though he pointed out that they were so overworked that they were not able to spare time to keep abreast of the growing literature of law.

The Subordinate Judicial Service in Uttar Pradesh has not only produced eminent Judges of the High Court, like Syed Mahmud, P. C. Banerji, Lal Gopal Mukerji and many others, who have shed lustre, by their judgments, in the pages of the law reports, but also persons, who, when they chose to go in other walks of life, achieved unique distinction. Sir Syed Ahmed was, when he was, in his earlier life, a Subordinate Judge of the State, the centre of educational activities and founded the M. A. O. College at Aligarh which later on blossomed forth into the Muslim University. His worthy son, Syed Mahmood, was a District Judge in the State and had, by the recognition of his extraordinary abilities, the unprecedented elevation to the Bench of the High Court, while he was still in grade III of the District Judges. The Law Reports have left immortal memorials to his profound knowledge of law and a deep study of subjects far far beyond the ordinary boundaries of legal knowledge. Syed Akbar Husain is ranked, even now, with the great poet Hali for his Urdu poetry which, because of rich portrayal of modern life, is sung even today. Sri Baijnath Das, a subordinate Judge of the State, was an active social reformer and while in service, presided in social conferences.

Sri S. C. Basu, another subordinate Judge, became well-known for the scholarship and researches in Sanskrit and Pali. Sri P. C. Mogha, another member of the Service, was the author of two books—"The Law of Pleadings" and "Conveyancer"—books which did pioneer work and have since their first publication gone into several editions. There are many other members of the Service, some of them alive, who have achieved distinction in various walks of life.

By the year 1915 the Judicial Service of the State subordinate to the Allahabad High Court had fully established its glorious reputation for honesty, integrity and legal acumen of its luminaries. The Government of India Act, 1915 laid down the following sources from which appointments of High Court Judges could be made :

- (a) Barristers, with one-third reservation for them,
- (b) I. C. S. District Judges, with one-third reservation for them, and
- (c) Vakils of High Courts of not less than 10 years' standing or Civil Judges of not less than 5 years' standing.

At a time when the number of High Court Judges did not exceed 11, at least two of them were from amongst the members of the State Judicial Service. In the year 1925, when the Oudh Chief Court was constituted under the Oudh Courts Act, it was provided in the enactment that at least one out of the total number of five Judges shall be from amongst the members of the Judicial Service of the State and at least two shall be the members of the Indian Civil Service, who have worked as District Judges for at least 3 years.

The Government of India Act, 1935 did away with the system of reservation. But the sources from which High Court Judges could be appointed continued to remain the same as contemplated by the Government of India Act, 1915. In the absence of reservation, the number of the Judges on the High Court Bench drawn from the State Judicial Service rose from 2 in the year 1935 to 7 in the year 1954.

There is no reservation for any section under the Constitution of India, under which the appointment of High Court Judges is contemplated only from the following two sources :

- (a) Advocates of not less than 10 years' standing, and
- (b) Members of the Judicial Service who have put in at least 10 years of service.

The members of the Indian Administrative Service are no longer eligible for appointment either as District Judges or as High Court Judges. Thus all the District Judges in the State are now members of the Subordinate Judiciary (known as Higher Judicial Service).

The recognition of the worth of the Subordinate Judiciary beginning from the Government of India Act, 1915 and culminating in the provisions of the Constitution of India is the greatest tribute which could be paid to the pioneer work done by the distinguished members of the State Judicial Service of Uttar Pradesh.

THE DEVELOPMENT OF THE JUDICIAL SYSTEM FROM THE TIME OF THE EAST INDIA COMPANY (1600—1857)

It would be of interest to examine, briefly, the development of the judicial system from the times of the East India Company, though we are concerned only with the growth of the judicial system during the regime of the Company and not with the manner in which the Company, a trading concern, became a political power. It was in 1600 that Queen Elizabeth granted a Charter to the Company to trade in all parts of Asia. In 1601, the Queen granted to the Company power "to make, ordain and constitute such and so many reasonable laws as to them or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the Company". The Charter was renewed by successive British Sovereigns, from time to time,

in 1609, 1661, 1668, 1698 and so on, with additions and alterations. The Company, with the permission of the Mughal Emperors, built fortifications for its factories, four of which were originally built at Surat, Madras, Bombay and Hoogly. The last one, with which alone we are concerned, was established in 1640, because the Regulations originating in Bengal spread, in due course, to the territories of this State. Within these fortifications, Indians as well as Europeans built their houses; and when "the Nabob, on that account, was about to send a Qazi or Judge to administer justice to those natives, the Company's servants bribed him to abstain from this proceeding".* The government of the Company formally came to an end in 1857, when the great Mutiny, now popularly known as the First War of Indian Independence, took place. By the Government of India Act, 1858 (21 & 22 Vict. c. 106), which came into force on September 1, 1858, it was declared that thenceforth "India shall be governed by and in the name of" the Queen and that all the powers and territories of the Company would vest in her.

Parts of the territories, now comprised in the State of Uttar Pradesh, were known as Regulation provinces, because they were administered by Regulations made by the Governor-General under the Charter Acts of British Parliament. The other parts, e.g. Oudh, were non-Regulation territories because they were administered not by Regulations but by the executive orders of the Governor-General. The Judicial system, therefore, originally differed, in its character, in the two parts. This accounts for the existence, formerly, of two judicial services in this State, one in Oudh and the other in the rest of the State, though they are now amalgamated.

Early in the Company's career, in 1618, Sir Thomas Roe, the ambassador of King James I, had, by treaty with the then Mughal

* *Mayor of Lyons v. East India Company*; (1836) 1 M. I. A. 174 (273).

Emperor, secured, for the Factory at Surat, the privilege, giving a power to the Company to decide disputes between the Europeans only. As already pointed out, the Tribunals established by the Company for the administration of justice between Europeans usurped jurisdiction to try cases between Indians settled within the fortifications also.

By the Charter of 1726 granted by George I, the Crown established Municipalities and Mayor's Courts at Madras, Bombay and Fort William, each consisting of a Mayor and nine Aldermen, seven of whom, with the Mayor, were required to be natural-born British subjects. This was the first type of courts established by the British Crown. They were empowered to try, hear and determine all Civil suits, actions and pleas between the parties. By the same Charter, the Governor and Council of each of the three towns were constituted Government Court of Record, to which appeals from the decisions of the Mayor's Court might be made, in cases involving sums under 1,000 pagodas; a pagoda was then equal to about 8 shillings. The decision of the Government Court was final; but, if the sum involved was 1,000 pagodas or more, an appeal lay from the Government Court to the King-in-Council.

By the same Charter, the Governor and five of the Members of Council of each town were appointed Justices of the Peace and were constituted a criminal court with powers to try and punish all offences, except high treasons, with the aid of Grand and Petty juries in the same manner as the Commissioners of Oyer and Terminer and Gaol Delivery did in England.

George I's Charter of 1726 was renewed by another Charter, granted to the Company in 1753 by George II, which continued the Mayor's Courts, with certain amendments intended to remedy defects of which the Company had complained against. The new Charter also established a Court of Quarter Sessions for trying criminal cases, and also a small cause court to be called a Court of

Request, in each of the three Presidency towns, for the determination of suits “where the debt, duty or matter in dispute did not exceed five pagodas”. All these Courts were made subject to the control of the Court of Directors, who were authorised by the Charter to make by-laws, rules and ordinances for the good government and regulation of the several courts of judicature established in India.

The chief alteration effected by the new Charter was that the Courts, which they established, were limited in their Civil jurisdiction to suits between parties who were not “Natives” of the several towns to which the jurisdiction applied. Suits between ‘natives’ were directed not to be entertained by the Mayor’s Courts unless by consent of the parties. They were all Courts of His Majesty, the King of England, and brought in the Common law of England. But their jurisdiction was limited within the Company’s fortifications. Outside these fortifications, the Qazis and Muftis continued to administer justice, under the Mughal rule, in criminal matters according to Mohammadan Law and in Civil matters according to personal law.*

The territories now comprised in the State of Uttar Pradesh came under the authority of the Company by stages. Hence the judicial system in these territories underwent change by stages. William Crooke, in his book “N.-W. P. of India” (1897), summarizes, at pages 122 and 123, the stages by which the various parts of this State came under the authority of the Company.

Up to 1835, the territories, now comprised in Uttar Pradesh, except Oudh, formed part of Bengal Presidency and were governed by the Governor-General as part thereof. The judicial system introduced in Bengal extended to this State as and when the various parts of the territory of this State came under the sway of the Company.

* DUBEY; Courts of Law and Admn. of Justice, 1965 ed., pp. 3-4.

Space does not permit a description of the clash between the Executive and Judicial authorities or of the union, separation and again a re-union of fiscal and judicial powers. Cowell in his lectures on the History and Constitution of Courts has given ample and illuminating details of the same.

Lord Clive landed in India for the last time in 1765. He decided to avail himself of the sovereignty of the Mughals. He proceeded to obtain the grant of the Diwani, the power of collection of revenue, from the Mughal Emperor and succeeded in this by obtaining the Farman, dated the 12th August, 1765, granted by King Shah Alam. The collection of revenue in India involved then the whole administration of civil justice. The Nizamat or the administration of criminal justice was for the time being left with the Moghul's lieutenant, the "Nabob" of Murshidabad. The administration, for the most part, of the revenues, and still more of civil justice, was conducted through 'native' agency till the 11th May, 1772, when the Company, by its Proclamation of the same date, 'stood forth as Dewan' and assumed the direct charge of the collection of revenue and administration of justice through its own servants.

In the same year Warren Hastings became the Governor of Bengal. He established, under the Judicial Regulations passed on August 21, 1772, Mofussil Diwani Adalats presided over by the Collectors of revenue in each district. These courts took cognizance of all disputes, real and personal, all causes of inheritance, marriage and caste, and all claims of debts, contracts and demand of rent. The questions of succession to the Zamindari and Taluqdari property were, however, not submitted to these courts but were reserved for the decision of the Governor-in-Council. A court of criminal jurisdiction, called the Faujdari Adalat, was also established in each district under the same Regulations. In it a Qazi and a Mufti, with the assistance of two Molvies appointed to expound

the Mohammedan Law, sat to hold trial of all criminal offences. The English Collectors of Revenue were directed to superintend the proceedings of these courts. Established by the same Regulations, the Sadar Diwani Adalat and Sadar Nizamat Adalat, respectively, heard appeals from the Civil and the Criminal Courts.

In 1774, the Mayor's Court at Calcutta was abolished and, in its place, a new Crown Court, called the Supreme Court of Judicature, was established in that town, by the Charter granted under the East India Company Act, 1772 (13 Geo. III c. 63), popularly known as the Regulating Act of 1773. An appeal from it lay to the Privy Council. By another Act of Parliament, passed in 1781 and known as the Act of Settlement (21 Geo. III c. 70), it was expressly declared that the Supreme Court would not have jurisdiction in any matter concerning revenue, or concerning any acts done in the collection thereof, according to the practice of the country or the Regulations of the Governor-General-in-Council. The Sadar Diwani Adalat was constituted, by the Act aforesaid, to be a Court of Record ; and it was also provided for the first time, by the same Act, that the decisions of this Court, in cases valued at £5,000 (Rs.50,000) or upwards, would be appealable to the Privy Council. Thus, although this Court was not established by a Royal Charter, it was nevertheless distinguishable from the ordinary courts of the Company, and traced its final establishment to the recognition by, and sanction of, the British Parliament.

In 1793, Cornwallis completely reorganized the Mofussil courts. The Governor-General-in-Council passed, in that year, a large number of Regulations establishing Courts of Zillah and City Magistrates for trying petty offences, and four Courts of Circuit in the Presidency of Bengal, under the superintendence of English Judges, assisted by Indians versed in Mohammadan Law, for trying, in the first instance, persons charged with crimes or

misdeemeanours, and enabling the Governor-General-in-Council to sit in the Sadar Nizamat Adalat and superintend the administration of Criminal Justice throughout the Presidency. For the hearing of civil actions, Courts of Zillah and City Judges were created. Four Provincial Courts of Appeal were established within the provinces of Bengal, Bihar and Orissa for the purpose of hearing civil appeals from the several Zillah and City Courts; the Sadar Dewani Adalat at Calcutta being vested with appellate jurisdiction and general power of supervision over the inferior courts in all suits of a value above Rs. 1,000. Below the City and Zillah Courts, were two classes of inferior Judges. "First in order, the Registrars of those courts who, when authorised by the Judges, were empowered to try and decide causes of amounts not exceeding Rs. 200; their decrees not being valid until revised and countersigned by the Judge. The next and lower grade of Judges were the Native Commissioners who were empowered, by Regulation XL of 1793, to hear and decide civil suits for sums of money or personal property of value not exceeding 50 Sicca rupees. Of these officers the head Commissioners were called Sadar Ameens and the rest were called Moonsiffs."*

Diwani and Faujdari Adalats on the Bengal pattern were established in Benares in 1795, and in the Ceded and Conquered provinces, i. e. the rest of the present Uttar Pradesh, except Oudh, in 1803-05. At the same time, two Provincial Courts of Appeal and Courts of Circuit were also established, one at Benares and the other at Bareilly; and the jurisdiction of the Sadar Adalats at Calcutta was extended, by various Regulations, up to these places. It was in 1832, that a separate Sadar Diwani and Nizamat Adalat was established by Regulation VI of 1831, for the North-Western

* Cowell; History and Constitution, etc., p. 176.

Provinces (the present U. P., except Oudh), with similar powers as those possessed by the Sadar Courts at Calcutta.

This is the general outline of the system which was established for the administration of civil and criminal justice. The year 1793 marks the era of judicial independence. The Government endeavoured to separate their judicial and executive functions and to render the officers who performed the latter functions amenable to the authority of those who exercised the former. The Courts so established lasted for a considerable time, nearly eighty years; but because of the process of occasional extension and repeal, the statutory provisions which created them are enveloped in some obscurity.

Regulation V of 1831 made some important alterations. The object was recited in the preamble to be the gradual introduction of respectable Natives into the more important trusts connected with the administration of the country. Moonsifs were invested with power to try and determine suits for money and other personal property of the value of Rs. 300, and suits with regard to land of the value of Rs. 300, except such land as was exempt from the payment of revenue. The Judges were empowered to refer to the Sudder Ameens any suit the value of which did not exceed Rs. 1,000. A new office, that of Principal Sadar Ameen, was created, to whom suits of value not exceeding Rs. 5,000 might be referred. Registrar's Courts were abolished; Provincial Courts of Appeal were gradually superseded, and, in two years, finally abolished; and original jurisdiction was given to the Judges in all suits exceeding in value, Rs. 5,000 with an appeal direct to the Sadar Dewani Adalat.*

In the period which intervened between 1793 and 1831, the relations of the Collectors to the Civil Courts underwent considerable alterations.

* Cowell, History and Constitution, etc., p. 178.

With regard to the Civil Courts throughout the Presidency of Bengal, the course of legislation had introduced considerable confusion as to the precise functions of some of the Judges. The original legislation on the subject was contained in the Regulations of 1793, the provisions of which had been extended in 1795, 1803 and 1804 to Benares and the Ceded and Conquered provinces, respectively.

The Adalat system itself remained in some obscurity, so far as the legislation on which it rested was concerned, till a very recent period. In order to ascertain the constitution and the jurisdiction of the Civil Courts at any time before 1871, it is necessary to trace out and piece together various bits of legislation which were distributed over no less than thirteen different enactments.

It was in 1868 that the old designations of various Judges in the Presidency of Bengal, including the North-Western Provinces, were altered. By Act XVI of 1868, the office of Sadar Ameen was abolished, and Principal Sadar Ameen's were designated 'Subordinate Judges'. Three years later, the Bengal Civil Courts Act, VI of 1871, which repealed all the previous Acts and Regulations relating to the constitution of Civil Courts in the Presidency of Bengal, provided for the appointment of 'District Judges, Additional Judges, Subordinate Judges and Munsiffs'. Ultimately, came the present Bengal, Agra, and Assam Civil Courts Act, XII of 1887, which also provided for the same four classes of Civil Courts in the aforesaid provinces.

The Courts established by the British Crown and Parliament, for the most part, applied English law, both civil and criminal; exceptions being made in favour of Hindus and Mohammedans. In suits against parties belonging to either of these religions, by whomsoever, instituted, whether by Europeans or Indians, the law applicable to the defendant prevailed. The proceedings of the Courts were governed by the English law of procedure. Until at least 1834,

they, for the most part, were amenable only to the Legislative authority of Parliament, and to such Regulations of Government as the Supreme Court might choose to acknowledge and register.

The Mofussil Courts, on the other hand, had nothing to do with English law, but were amenable, in all respects, to the Regulations of Government, and, when Hindu or Mohammadan Law did not apply, or when no Regulations were applicable, were directed to proceed according to justice, equity, and good conscience.

Oudh was annexed in 1856, to which the judicial Regulations of Bengal did not apply. Like all other non-regulation provinces, it also remained a non-regulation territory and the judicial system in Oudh followed the pattern of other non-regulation territories and was different from that of the N.-W. Provinces.

Various grades of Courts were established in Oudh, by Act XIV of 1865, similar to those provided for the Central Provinces under the same Act. But, as this Act was framed chiefly with reference to the Central Provinces, it was found incomplete and inconvenient as regards Oudh. Accordingly, in 1871, the Oudh Civil Courts' Act was passed, which applied to all Civil Courts in Oudh. It reconstituted, almost on the same model as that of the 1865 Act, five grades of Courts, viz., those of (1) the Tehsildar, (2) the Assistant or Extra Assistant Commissioner, (3) the Deputy Commissioner or the Civil Judge of Lucknow, (4) the Commissioner, and (5) the Judicial Commissioner. The Governor-General-in-Council was empowered to fix, and, from time to time, to vary, the number of Courts of each grade. The general control over all the Courts of the first and second grades in any District vested in the Deputy Commissioner, and the control over the Courts of the first three grades, in any division, vested in the Commissioner, subject to the superintendence of the Judicial Commissioner. The Court of

the Deputy Commissioner was the Principal Civil Court of Original jurisdiction in any district and he could direct the business in the Courts of the first and second grades to be distributed among such courts as he thought fit, having regards to the limits of their jurisdiction. He entertained appeals from those courts except when the amount in dispute exceeded 1,000 rupees, in which case the appeal lay to the Commissioner. Appeals lay also from the Deputy Commissioner to the Commissioner and from the latter to the Judicial Commissioner, who was empowered to refer cases, in which he entertained any doubt, to the High Court of the North-Western Provinces, which latter Tribunal was directed to deal with the case so referred as if it were an appeal instituted in that very Court.

Civil Courts, on the lines of those in the N.-W. Provinces, were established in Oudh by Act XIII of 1879, which Act, as amended by Act XVI of 1891, established the following grades of Civil Courts in Oudh; namely, (1) the Court of the Judicial Commissioner, (2) the Court of the District Judge, (3) the Court of the Subordinate Judge, and (4) the Court of the Munsif. The Oudh Courts Act, IV of 1925, created another Court in Oudh, namely, that of the Additional Judge and also altered the designation of the 'Subordinate Judge' to 'Civil Judge'. This alteration of designation took place in the erstwhile province of Agra in 1936. Under the same Act, the Court of the Judicial Commissioner of Oudh was replaced by a Chief Court, which was ultimately amalgamated with the Allahabad High Court in 1948. The Bengal, Agra and Assam Civil Courts Act, 1887, was extended to Oudh in 1956 by U. P. Act no. II of that year; and thereupon all the Civil Courts of Oudh, constituted, and the powers conferred thereon, by the Oudh Courts Act, 1925, were deemed to have been respectively constituted and conferred under the provisions of the Act of 1887.



DR. N. P. ASTHANA, PRESIDENT BAR ASSOCIATION, HIGH COURT, ALLAHABAD
(First Advocate General, U. P., whose 93rd birthday was celebrated on
April 20, 1966)

History of the High Court Bar Association

By

SRI SATYENDRA NATH VARMA

Advocate, High Court, Allahabad

LOOKING back at the annals of the High Court Bar Association one is bound to be struck by the awe and veneration which its great and distinguished members inspired and, by their examples, continue to do so. It has been a glorious history of giants who were not content with being mere great and celebrated lawyers but who transcended far beyond into much nobler fields of human activities such as national struggle for deliverance from an alien government. I am not saying so, because the past is always said to appear more luminous from a distance, but because the contributions of some of the more distinguished members of our Bar have become matters of national history.

It would be difficult to conceive any record of public life and of eminent publicmen, educationists and statesmen of the country without mentioning the names of Pt. Ajudhia Nath, Sir Sunder Lal, Pt. Moti Lal Nehru, Pt. Madan Mohan Malviya, Sir Tej Bahadur

Sapru, Dr. Satish Chandra Banerji, Dr. Sachchidanand Sinha, Sri Purshottam Das Tandon and last, but not the least, Pandit Jawaharlal Nehru, who all belonged to the Bar of this Court. The above is only a list of those of our distinguished members of the Bar, whose activities were not confined to the field of law but who shone in other spheres of life, and, in their own ways, were instrumental in moulding the course of history of this nation and who are now no more with us. I cannot, therefore, help feeling proud that I belong not only to this profession rightly described by Lord Simon as "the greatest profession of the world," but that I am a member of an association to which these great lawyers belonged.

The Allahabad High Court Bar Association had its birth (under a different name) almost a century ago, and if one attempted to write its biography and to do justice to the subject it would cover volumes. I shall, therefore, endeavour to provide only fleeting glimpses of the subject.

In the year 1869 the High Court then, known as the High Court of Judicature for the North Western Provinces shifted from Agra to Allahabad. At that time the Bar was composed of the Barristers of the English and Irish Bar, the Advocates of Scotland and the Vakils enrolled by the High Court. Except Mr. Syed M. Mahmood the rest of the Barristers practising here were Europeans, who, for more than one reason, preferred to remain aloof from the Vakils. Neither were the Vakils anxious to mix with those Barristers, either socially or otherwise.

In the year 1873 the Barristers decided to have an association and on February 3, 1873 they formed an association, called the Bar Association, with 12 European Barristers as its first members, and Mr. Jardine became its first President. The object of the Association was to consider matters connected with the interests of the Bar

in the Province and especially to promote a high professional tone in all branches of legal profession and to repress unprofessional practices.

The Allahabad High Court has had very distinguished European Barristers, viz., Sir Arthur Strachey (who later on became a Judge of the Bombay High Court and returned to Allahabad as the Chief Justice of this High Court in 1899), Sir Walter Colvin, Dillons (father and son), Conlon, Alston and O'Connor. However, with the exception of Mr. O'Connor, the Barristers flourished mostly on the criminal side. Sir Charles Ross Alston was one of the most brilliant and powerful advocates this Court has had on the criminal side. Sir Charles joined the High Court in 1885 and practised for nearly 53 years till he died in 1937. He was a fearless advocate and would place most intricate matters with amazing brevity and clarity. In 1910 he was raised to the Bench for a short time. He was always in great demand for conducting important criminal cases in neighbouring provinces and native Indian States. He was not only very highly respected and popular among every section of the Bar but had a jovial temperament and possessed keen sense of humour. Sir Charles was extremely short-statured; and it is said that once one of the Judges, who was very tall and hefty, told Sir Charles at a certain party that he could put him in his pocket. Sir Charles took no time in retorting; "You will then carry more brains in your pocket than in your head". Sir Charles was also the President of the Bar Association for a number of years.

Mr. B. E. O'Connor, practised exclusively on the civil side and was one of the leaders of the Bar. He had a large first appeal practice, and both Mr. O'Connor and Sir Tej Bahadur Sapru shared the leadership of the Bar on the civil side for decades. He came to High Court in 1893 and practised till 1937 when he died.

Mr. O'Connor was elected Secretary of the Bar Association in 1900 and remained so till the year 1936 with an interruption of an year or so. The length of his tenure as Secretary speaks volumes of the affection and regard in which his fellow members must have held him. It also dispels the myth that busy lawyers can have no time to attend to extra-professional matters.

The first subjects, which appear to have agitated the minds of the Barristers from the very inception of the formation of their Association, were the standard of fee that they should charge for outstation cases and for appearance in District Courts of Allahabad itself and the question of suppressing the practice of "toutism".

It was two years after the Bar Association was founded that the Vakils of the High Court decided to form their own association and in 1875 the Vakils' Association was established. The objects for which this association was formed were, "(a) To consider matters affecting the interest of the legal profession in the North Western Provinces and more specially of the Vakils, (b) To promote high professional tone among the members of the profession and (c) To watch the State of the law and the progress of legislation, and to take such steps as may be deemed necessary in respect thereof."

The first President of the Vakils' Association was Pt. Ayudhia Nath who attained a very high position at the Bar. He was a fearless advocate and contributed a great deal towards the public life of the country. Pt. Ajodhia Nath was a venerable figure and looked majestic with long flowing beard. He was the Chairman of the Reception Committee at the IV Session of the Indian National Congress held at Allahabad in 1888 where his powerful address was greatly appreciated. Fortunately for us we have today in our midst his son, Pt. Gopi Nath Kunzru, one of the leaders of our Bar, whom we all admire for his fearlessness.

Until recently there existed a traditional, but healthy, rivalry between the Barristers—particularly European Barristers and Vakils of this Court. This gulf naturally widened further because of the existence of two Associations in the Bar of the same High Court. The European Barristers, because of their race and the fact that Englishmen were ruling this country, had developed a complex against the “Native Vakils” (which term they often used in their proceedings). They always considered themselves superior to the Vakils, more so because under the rules then existing the junior-most Barrister was entitled to claim seniority and the right of pre-audience against any Vakil however senior. The Vakils for their part thought that this complex amongst the Barristers emanated from the large practice which the Vakils enjoyed on the civil side almost to the complete exclusion of the Barristers and the superior intellect of some of the outstanding Vakils and their independent outlook and attitude towards public questions. The fact, however, remained that the leadership of the Allahabad High Court Bar always belonged to the Vakils (later on Advocates), e. g., Sir Sunder Lal, Mr. Jogendra Nath Chaudhri, Pt. Moti Lal Nehru, Sir Tej Bahadur Sapru, Dr. Satish Chandra Banerji, Mr. Pearey Lal Banerji, Dr. Kailas Nath Katju, Pt. Shyam Krishna Dar, Dr. Narayan Prasad Asthana, Pt. Gopal Swarup Pathak, and Pt. Kanhaiya Lal Misra (our present Advocate-General). I am not, for a moment, forgetting that we have had eminent Barristers also, as leaders of the Bar, e. g., Messrs Ryves, O’Conor, Boys, Alston, Dillon, Colvin, Conlan and Sulaiman.

It was in 1896, nearly thirty years after the High Court was established, that the Chief Justice was given power to admit a Vakil to the status of an Advocate, if, in his opinion, the lawyer was of an outstanding ability and merit. M. Ram Prasad, Mr. J. N. Chaudhary,

Pt. Sunder Lal and Pt. Moti Lal Nehru were admitted in 1896 as the first batch of Vakils to the status of Advocates.

Although these four Vakils had been admitted to the status of Advocates, they refused to join the Bar Association and continued to remain members of the Vakils' Association. The Bar Association, as mentioned earlier, was dominated by Europeans and the Vakils were in no mood to be dominated by them.

Although Vakils and Barristers had their differences over smaller issues, quite often on the question of right of pre-audience, there was never any major clash between the two, except once. When the first batch of Vakils was raised to the status of Advocates, a question arose whether they could wear the same gown which was worn by the Barristers of England. The members of the Bar Association objected to it and, on this objection being raised, the then Chief Justice, Sir John Edge, decided that Vakil-Advocates would wear the gown which the Chief Justice himself wore, i.e. Q.C.'s gown and since then the Vakil-Advocates have been wearing the same gown as did the Judges, until lately, when the rules were changed and both the Barristers and the Advocates had to wear the same gown.

It will not be out of place to mention that the two Associations, until 1957 when they were amalgamated, were housed in different portions of the High Court building, which, incidentally, happened to be at quite a distance from each other. Several attempts were made right from 1929 onwards to amalgamate the two Associations; but, for one reason or the other the amalgamation could not be brought about earlier than 1957.

The objects for which these two Associations were formed can be said to have been achieved in a fair degree. The records of the two Associations would show how scrupulously and cautiously they

have been guarding the interest of the profession. The records are replete with resolutions passed during the past 93 years touching upon various aspects of the profession in general and the conduct of its members in particular. The Association has always kept a constant vigil and, whenever it found any inroads into the civil liberties, it took action promptly registering its protest in the strongest words. One will also find from the records the efforts made by the two Associations in toning up and maintaining high code of professional conduct by members of the Bar; and in this respect, even an important member of the Bar would not be spared if he were found guilty. The high standard of professional ethics that was expected of a member of the Bar in those days would appear from the following incident. One Mr. X, a Vakil, practising in the High Court, changed his office from one locality to another and had the following notice published in a journal that was published from Allahabad :

“NOTICE

The undersigned hereby informs his clients that he has removed his office from Kydganj to Chowk, Mohalla Mirganj, that is, to the house well-known as Kothi so & so. All communications to him should, therefore, in future be made to the above address.

Hour of attendance from 6-30 to 9-30 in the morning, and from 5 to 9 in the evening.

Mr. X.

Vakil, High Court, Allahabad.”

This notice at once attracted the vigilant eye of the Association which demanded of the member explanation as according to the Association the notice amounted to advertisement. The lawyer gave his explanation, which, however, failed to satisfy the Association.

The member's conduct was accordingly condemned as unprofessional and he was expelled from the Association and the matter was referred to the High Court. There are several other instances where the Association took prompt action against members whose conduct tended to soil the fair name of the profession.

The Vakils' Association was a well-knit body and this was demonstrated in connection with an incident in 1927 which would stand unique in the history of the Association. Sir Tej was the President of the Association and Pt. Shyam Kishan Dar (later a Judge of this Court) was its Secretary, Mr. Justice Dalal and Mr. Justice Pullan, both members of the Indian Civil Service, constituted a Bench to hear cases under Order XLI, Rule 11, C.P.C. They used to read the papers of the cases at home. Next day when the cases were taken up they would confine the arguments to points advanced by them and did not allow the Counsel to build up their arguments. With the result the cases could not be placed properly. This caused great deal of resentment among lawyers and Sir Tej Bahadur Sapru took a serious view of the matter and called a meeting of the Association as, in his opinion, this manner of hearing of appeals was likely to shake litigant public's confidence in the administration of justice. Thereupon the Association passed a resolution in the following terms : "Resolved that a courteous, polite but firm letter be sent by the Secretary to Mr. Justice Dalal and to Mr. Justice Pullan representing to them the general dissatisfaction against their impatience while hearing cases in Court. The letter should be drafted by the Secretary and be approved by the President." Accordingly a letter was sent to the two learned Judges under the signature of Pt. S. K. Dar, the Secretary of the Association. The Acting Chief Justice, Sir Cecil Walsh was of the opinion that Mr. Dar was guilty of

contempt, he sent for Mr. Dar and asked him to apologise and on Mr. Dar's pointing out that he had only signed the letter, enclosing the resolution, as Secretary of the Association and there was no question of his personal apology, the learned Acting Chief Justice issued a notice of contempt of Court against Mr. Dar. The matter was considered by the Vakils' Association and every member of the Association headed by Sir Tej Bahadur Sapru signed an identical letter which was sent to the two learned Judges and the copy of it was sent to the Acting Chief Justice. Thereupon notices were issued to all the members of Association to show cause why they should not be dealt with for contempt of court. As every member of the Vakils' Association was involved, the Barristers were requested to defend them and Mr. O'Connor, Mr. B. Malik (later on Chief Justice of this Court) and Dr. M. N. Agarwal were selected to represent the members of Vakils' Association. The Bench, constituted for hearing the case, consisted of Sir Cecil Walsh, Acting Chief Justice and Sir Benjamin Lindsay. Mr. Justice Lindsay on coming to know what the case was about told the Acting Chief Justice that he refused to make himself ridiculous and would not like to be on that Bench. The other English Judges adopted a similar attitude and then Sir Shah Mohd. Sulaiman was approached who agreed to form a member of the Bench provided he was given 24 hours' time to mediate. His mediation resulted in a happy ending and the proceedings were dropped.

Another incident which deserves mention took place years ago. A Senior Judge in a first appeal bench, who was an English man, had adopted a method of asking the appellant's counsel the precise point involved in the case as soon as the first appeal was opened. The learned Judge was always in a hurry to know at once the question involved in the appeal and as

most of the first appeals involved questions of facts and the point could not be formulated directly and with such precision as the learned Judge would have liked it to be placed, counsels found themselves in difficulty. The learned Judge who was impatient by temperament would thereafter like to dispose of the appeal in half an hour. He used to dispose of a large number of first appeals in a day. This attitude was strongly resented by the members of the Bar and while the matter was being discussed in the Vakils' Association Mr. Gokul Prasad (later Mr. Justice Gokul Prasad) who was a senior member of the Bar and was commanding large civil practice, asked one of the junior members of the Bar if he had any first appeal for hearing. The particular junior did have a first appeal before that Bench. Munshi Gokul Prasad asked him to file his appearance in the first appeal. The Junior told Munshi Gokul Prasad that his client would not be able to pay his fee. Munshi Gokul Prasad said that he was not asking for any fee. When the case was called out Munshi Gokul Prasad stood up to argue the first appeal. The members of Vakils' Association had collected in the court-room in good number. (Munshi Gokul Prasad had not disclosed what he was going to do). The learned Senior Judge was happy to see Munshi Gokul Prasad appearing before him and straightaway asked the point involved in the case. Munshi Gokul Prasad did not answer and instead requested the learned Judge to skip over the first 2 pages of the paper book containing the grounds of appeal and started reading the plaint beginning from "In the Court of Suit No. so & so *versus* so & so. The plaintiff begs to submit as follows"

The learned Judges were surprised at this method of argument of Munshi Gokul Prasad who was well known for being brief and to the point. The learned Judges inquired if it was necessary to read all

that and further remarked that that was not the way in which Munshi Gokul Prasad usually argued his appeal. All this time the learned Judges had also observed the crowd which had collected in the Court and considering that it was a first appeal of not any sensational nature they smelt something unusual. Munshi Gokul Prasad thereupon raising his voice said, "My Lords, this is a first appeal which lies as a matter of right. The client has paid a heavy court-fees and he has a right to be heard. I shall take your Lordships through the paper book from cover to cover." The learned Judges then realised what the matter was and requested Munshi Gokul Prasad to proceed with the case in his usual manner. Munshi Gokul Prasad explained to the Judges the desirability of giving appellants in a first appeal the hearing which it deserved. Since then the learned Judge changed his method and never resorted to short-cuts.

M. Ram Prasad, Pt. Bishambhar Nath, Mr. Jogendra Nath Chaudhary, Pt. Sunder Lal, Pt. Moti Lal, Pt. Madan Mohan Malviya, Mr. Satya Charan Mukerji, Dr. Satish Chandra Banerji, Sir Tej Bahadur Sapru and Mr. Pearey Lal Banerji have been some of the distinguished leaders of the Bar who have served the Vakils' Association (later on Advocates' Association) in one capacity or the other with distinction. I have not mentioned the names of those who are fortunately still with us and who have served the Association no less.

Readers would find the lives of great lawyers of this Court dealt with at different places in this Volume and it is not necessary to write about them here. I, however, cannot resist the temptation of saying a few words about some of them.

Sri Jogendra Nath Chaudhary, it is said, has been one of the greatest Advocates this High Court has produced. He had an extraordinary command over the English language and there have been few who could equal him in legal learning.

Once there were two cross first appeals and Sri Jogendra Nath Chaudhary and Pt. Moti Lal Nehru were appearing against each other. Mr. Chaudhary was in the habit of marking the paper books which he had looked into with red and blue pencil. Having a very large first appeal practice he had not been able to look into these appeals. However, as the appeal in which Pt. Moti Lal Nehru was appearing for the appellant was listed first. Mr. Chaudhary had thought that he would look into the brief while Pt. Nehru would be arguing for the appellant. Before Mr. Chaudhary arrived in the court Moti Lalji had discovered that Mr. Chaudhary had not looked into the briefs as he had noticed that Mr. Chaudhary's briefs were not marked. When the case was called out, Pt. Moti Lal stood up and in order to put Mr. Chaudhary in some discomfiture and to place him in a tight corner requested their Lordships to hear the first appeal in which Mr. Chaudhary was appearing for the appellant first as that was the substantial appeal and Pt. Nehru's client had a very nominal claim in his appeal. The learned Judges thought that it was a fair suggestion and asked Mr. Chaudhary to open his appeal. Mr. Chaudhary understood Pt. Moti Lal's game. He, however, stood up, glanced at the grounds of appeal and discovered that the case involved a question of fraud. It is said that Mr. Chaudhary gave such a masterly exposition on the elements of fraud for nearly three hours that he kept the whole court-room spellbound and when the court rose for lunch at one o'clock Mr. Chaudhary looked into the facts of the case during the interval and thereafter argued out the appeal on facts after the court reassembled.

About Pandit Madan Mohan Malviya, it has been said by Sir Tej Bahadur Sapru that he could not think of anyone who worked with such devotion and spirit of sacrifice in so many fields and achieved distinction in every one of them as the great Pt. Malviya. He

was considered to be a lawyer of keen intellect, extremely fair in the presentation of his case and courteous to his opponents. He was held in high regard by Judges not only for his ability but for his spotless character. So great was Pt. Malviya's command of English that on one occasion a great British politician (in introducing him to the audience in one of the rooms of the House of Commons) expressed his surprise that, without ever having been to Oxford or Cambridge as a student, Pt. Malviya should have possessed such wonderful facility of expression in a foreign tongue. It was after his retirement from active practice that at the persuasion of friends Malviyaji agreed to argue the famous Chauri Chaura riot appeal. There was naturally great crowd in the court to hear Malviyaji. Pt. Malviya's arguments rose to such great heights that Sir Grimwood Mears, Chief Justice, who was one of the two Judges hearing the appeal, rose from his seat thrice during the course of arguments and bowed to Malviyaji. After the arguments were concluded and while reserving the judgment Sir Grimwood stopped the proceedings and told those present in the Court that while it was not possible to say what would be the fate of the appeal, it was necessary to observe that it was the extreme good fortune of those who had heard Malviyaji in the case and in his opinion no one else could have argued the appeal better. As one of the President of the Congress, as the single handed founder of the famous Hindu University of Benaras, as a skilful debator in the Central Legislature, in the proceedings of which he took a very prominent part for years, Pt. Malviya was a leader of whom not only Allahabad Bar but the whole country is proud.

Dr. Satish Chandra Banerji was another jewel of this Court. He was a Doctor of Laws of the Allahabad University and was a Premchand Roychand Scholar. He was a very keen student of Shakespeare and it is said that on Sundays, and other holidays, students

from the University used to go to his house on Edmonstone Road for the solution of their difficulties. Even in the midst of the preparation of a heavy first appeal, he used to receive students with kindness and used to help them in their academic problems. If he had not died at the early age of 42 the history of this Bar might have been different. In those days the trio of Sapru, Banerji and Sinha (Dr. Sachchidanand Sinha) was the object of universal admiration for their learning and culture.

Mr. Satya Charan Mukerjee was the undisputed leader among the Indian Members of the High Court Bar on the criminal side. He was a lawyer of great ability, experience and learning and possessed amazing memory.

The position of the Rt. Hon'ble Sir Tej Bahadur Sapru in this High Court was unique. Having joined the Allahabad High Court Bar in 1898—where he practised for fifty long years, he was enrolled as an Advocate in 1906, then considered a great distinction as it placed him on a footing of equality in status with the members of the English, Irish and Scottish Bar.

It was only after ten years of steadily rising practice that he got his first great chance—a case of great importance under the Hindu Law. Sir Tej was pitted in it against some of the eminent leaders of the High Court Bar. The case lasted for some weeks, and he argued it with such consummate skill and rare forensic ability that at the conclusion of his address he was unreservedly complimented by the Chief Justice presiding over the Bench. It was this case which established his reputation and at once marked him out for the highest position at the Bar. He soon built up an extensive and lucrative 'first appeal' practice, and there had scarcely been an important case since then in the High Court of Allahabad in which he had not been engaged either by the appellant or the respondent.

By 1912, when he was engaged in some important commercial cases, in the Lucknow Chief Court—absorbed in 1948 in the Allahabad High Court—he opposed successfully Sir Rash Behari Ghosh, then the doyen of the Indian Bar, and thus came to occupy a front rank position throughout the United Provinces. By 1916 when he was engaged in a sensational ‘waqf’ case, in which Muslims as a community were keenly interested and Sir Rash Behari again opposed him, he had come to be acknowledged as one of the foremost leaders of the Bar possessing an all-India reputation. His services had since been in constant demand all over the country. Henceforward he appeared in several cases of importance in the High Courts of Calcutta, Patna, Lahore, Nagpur, Madras and other places ; and had the first refusal of almost all the biggest cases in the country.

Very seldom did Sir Tej indulge in wit or humour, but when he did, the effect was generally devastating. A journalist in London, who once rang him up at night, got it as much as he merited. “Our Indian Office has just cabled that you have been offered a peerage” He told him. “What of it?” asked Sir Tej. “Well, Sir” persisted the eager but exasperating newshawk ; “Could I know what title you have chosen?” “Certainly” replied that inveterate smoker (Sir Tej), “It is the Duke of Blazes”, and hanged the receiver down. That was, indeed characteristic of him, even in court. He stated his case with almost scientific precision. He was at his best when provoked by a Judge by some harassing question. In the course of his submissions, in the “Search-light” Contempt case, in the Patna High Court, when pressed hard by the Chief Justice (whose decision had led to the contempt proceedings being instituted) he made in all solemnity the following submission “My lords, there is no presumption that a

judge need know law." No Judge on that Bench was provoked after that into heckling Sir Tej.

It may safely be asserted that, while few advocates in India stood higher than he did in forensic ability, deep legal erudition and profound knowledge of Constitutional Law, there was, perhaps, none who excelled him, in the present generation, in upholding the best and highest traditions of professional standards. In personal and public life also he upheld the best and highest traditions of social conduct. And it was that which invested him with a moral grandeur which, coupled with his vast erudition, made his name loved and respected throughout this country and abroad.

In sheer forensic eloquence few could match Mr. Peary Lal Banerji. Those who had the good fortune of hearing his father, namely, Mr. Dwarka Nath Banerji, another eminent and distinguished lawyer of this Court, say that his delivery and command over English language was even superior to that of Mr. Peary Lal Banerji. P. L. B., as he was affectionally called, was Advocate-General of U. P. which office he filled with great distinction. With Dr. Kailas Nath Katju he shared the leadership of the Bar for decades. Of his many splendid performances the one that stands out was when he was called upon to defend the great P. R. Das of Patna High Court who had been charged by a Bench of Allahabad High Court with having committed contempt of Court. It is said that P. L. B. surpassed himself in forensic ability and secured discharge of the notice of contempt.

The Allahabad Bar has produced some of the greatest Judges of the country and the Court has given Chief Justices and Judges to almost every High Court in India.

The Vakils' Association continued to exist till the year 1928. After passage of Indian Bar Council Act, 1926, the Vakils' Associa-

tion changed its name and it became Advocates Association. The Barristers' Association which was known as Bar Association somehow assumed the name of Bar Library some time in the year 1922.

Apart from Advocates' Association and the Bar Library, the Bar had a third Association which had comparatively small membership. It came into existence under unfortunate circumstances. Indian Barristers when they started practice in the Allahabad High Court and applied for membership of the Bar Library, more often than not, were blackballed and it was only in the second or third attempt that they were elected. When Mr. Nihal Chand, a Barrister, was blackballed, he refused to have to do anything with the Bar Library. In those days a Barrister was eligible for membership of the Bar Library only after six months practice in the High Court. During that period he had no option but to join the group round Mr. Nihal Chand and some of them stayed on in that group, specially as there was no admission fee and no subscription to pay. This group gradually grew and was given official recognition in 1933 by the then Chief Justice, and since then it was known as 'High Court Bar Association'. They were also given couple of rooms and the Association consisted of both Barristers and Advocates.

In November, 1957, the three Associations amalgamated and since then they are occupying the new building and the amalgamated associations decided to call it the High Court Bar Association.

Since 1957, amongst the important events that have taken place I would mention only three. On 3rd October, 1960, Dr. Rajendra Prasad visited the Association when the Association had the privilege of admitting him as an honorary member of the High Court Bar Association. On this occasion, Dr. Rajendra Prasad made a very memorable speech in which he touched upon the question of introduction of qualifications for candidates to be elected to the

Legislatures and also upon the absence of the provision regarding fundamental duties of citizens in the Constitution of India.

The next important event was when on 4th May, 1961, Dr. Radhakrishnan, the then Vice-President of India, unveiled the portraits of 3 distinguished and great lawyers of this Court, namely, Sir Sunder Lal, Pt. Moti Lal, Nehru and Sir Tej Bahadur Sapru, in the Library Hall.

The third important event was when in April, 1965, Shri Lal Bahadur Shastri, the then Prime Minister of India, unveiled the portrait of his predecessor in office, Shri Jawaharlal Nehru, in the Library Hall. Shri Jawaharlal Nehru after doing his Bar joined the Allahabad High Court in the year 1912 and was a member of the Bar Library for a long time.

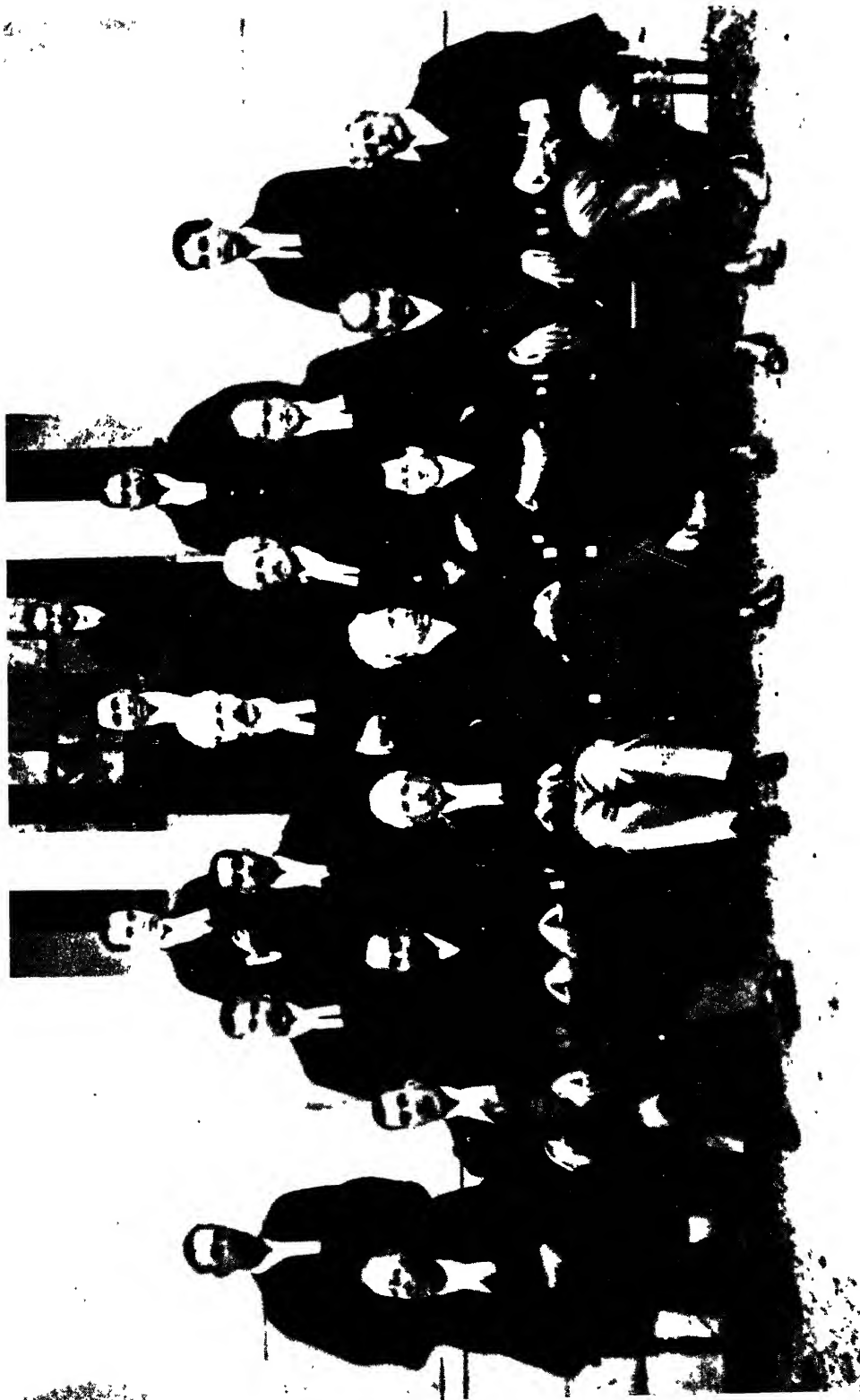
This Bar gave the country not only the first President of the Constituent Assembly, namely, Dr. Sachchidanand Sinha, who joined the Allahabad Bar in 1896 and remained here till 1910 when his election to the Imperial Legislative Council forced him to shift to Calcutta (the then Capital of India) where he joined the Calcutta High Court, and the first Prime Minister of the country, but has also given three eminent lawyers to look after the Law Portfolio of the Government of India, namely Sir Tej Bahadur Sapru, who was the Law Member of the Viceroy's Executive Council from the year 1921 to 1923, Dr. Kailas Nath Katju, Law Minister from year 1951 to 1952 and our present Law Minister, Shri Gopal Swaroop Pathak.

The Association has a well-equipped Library; has provided furnished chambers for its members, spacious accommodation for studying and preparing cases and owns a Printing Press which brings out the Daily Cause List. Today, the Association has on its roll 413 members.

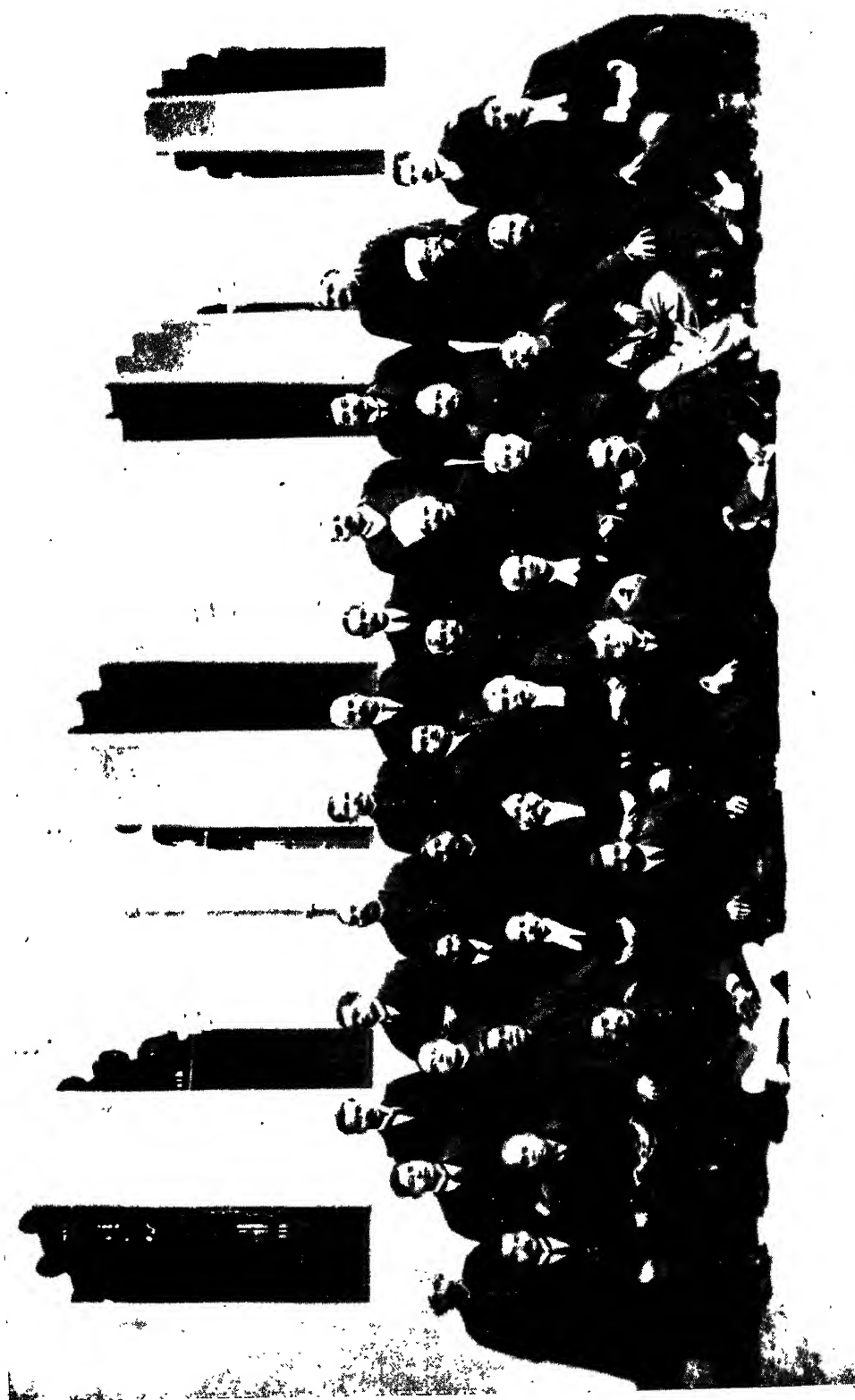
Any account of the history of the Bar Association will be incomplete without making a mention of its present President. Dr. Narain Prasad Asthana, a doyen of the profession. Dr. Asthana was elected the President of the Bar Association in 1949 when the vacancy in that office occurred on account of the death of Sir Tej Bahadur Sapru, who was its President for 25 years. Dr. Asthana was the first Advocate General of this Province. He is a profound lawyer, distinguished educationist, having been the Vice-Chancellor of the Agra University for a number of terms, and an important public figure of this Province. Dr. Asthana, who is now 93, attends the High Court regularly. The Bar Association is looking forward to that day when it will be celebrating not only its own centenary but also that of Dr. Asthana in the year 1974.

In concluding I would add that if only I were free to dwell at length upon the roles which some of our members, who are happily still in our midst—have played not only in the field of law and administration of justice but also in the realm of political and social affairs of the country, I am sure any impartial observer would look upon our Bar with still greater veneration.

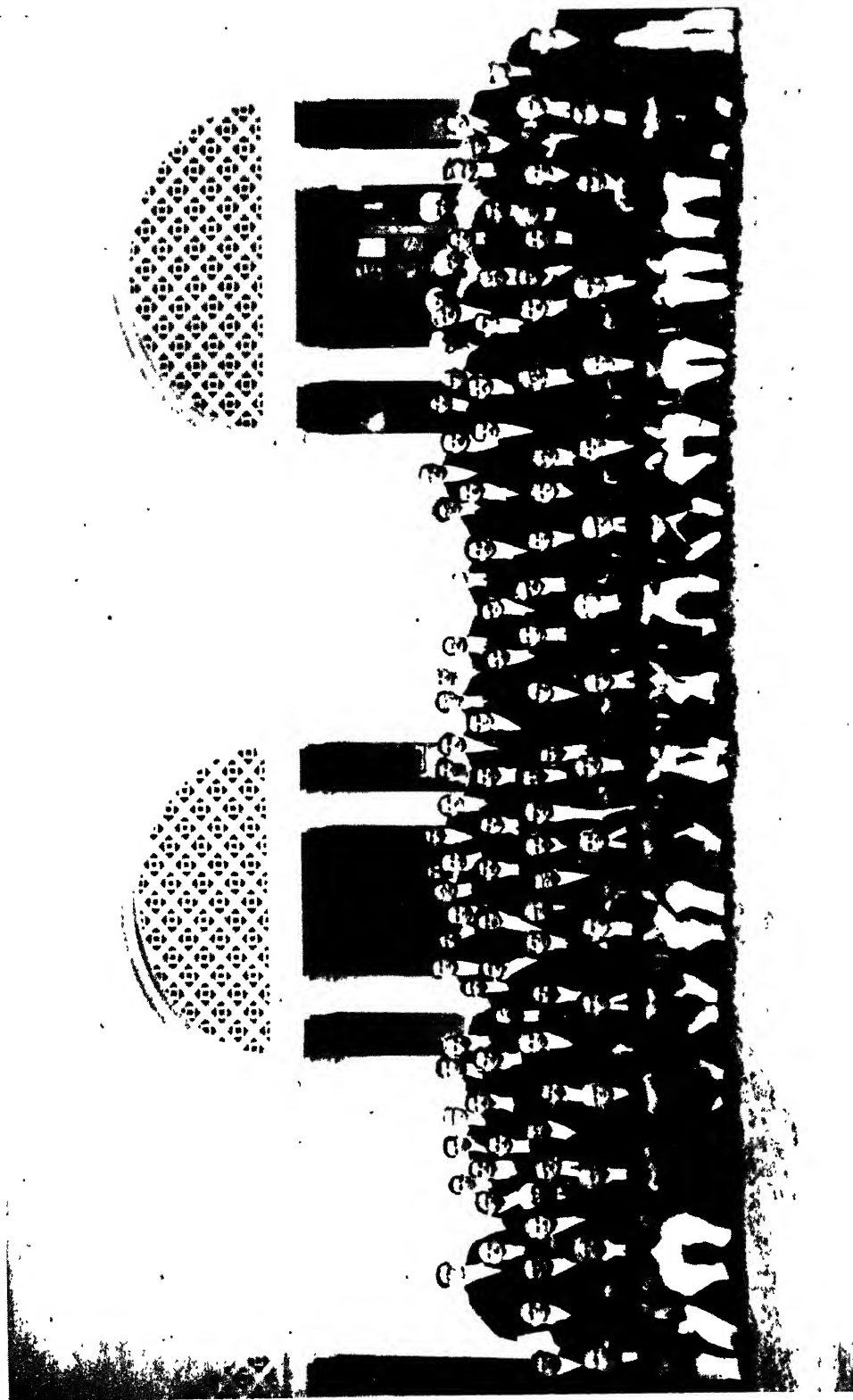




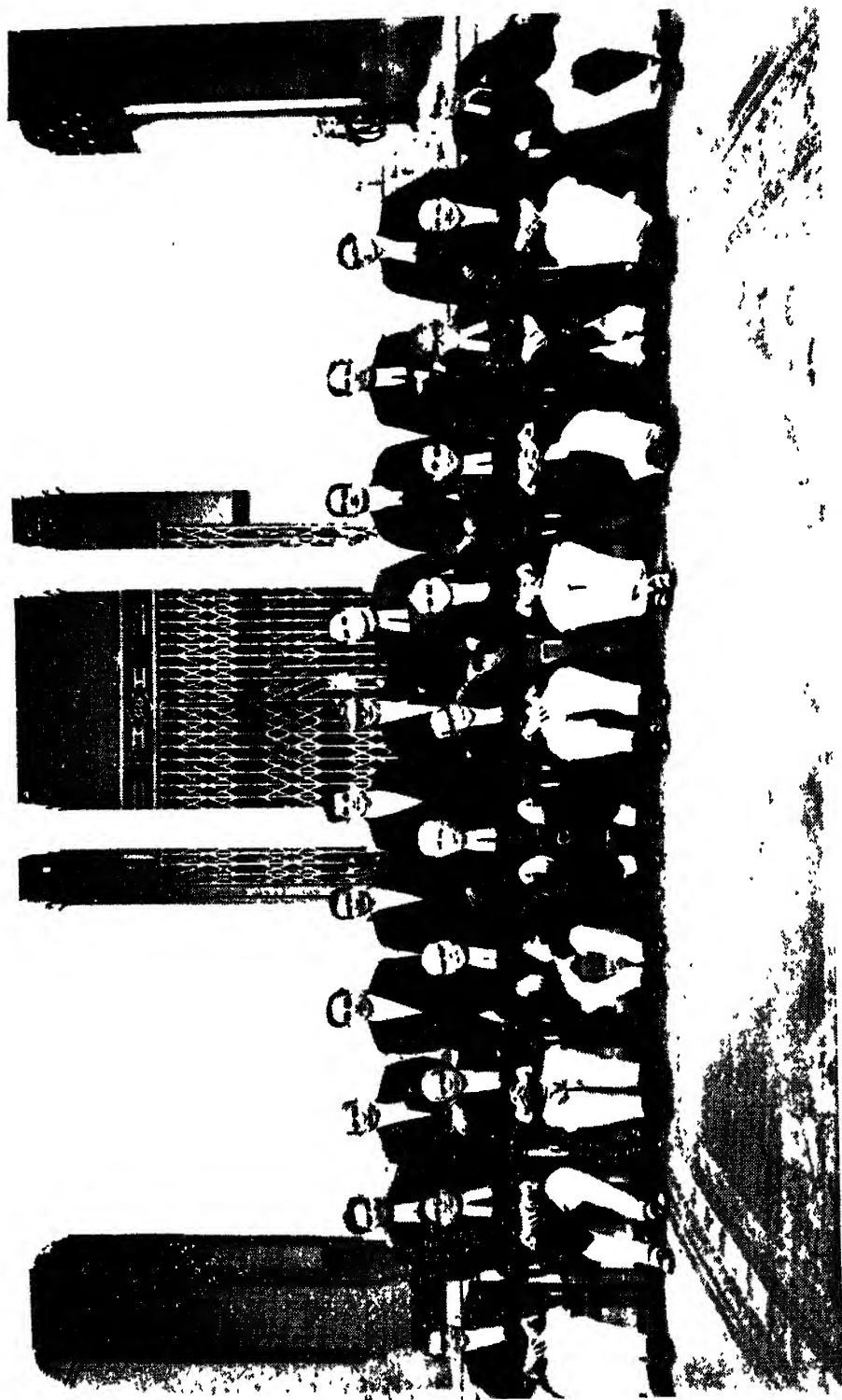
MEMBERS OF THE BAR LIBRARY IN 1917



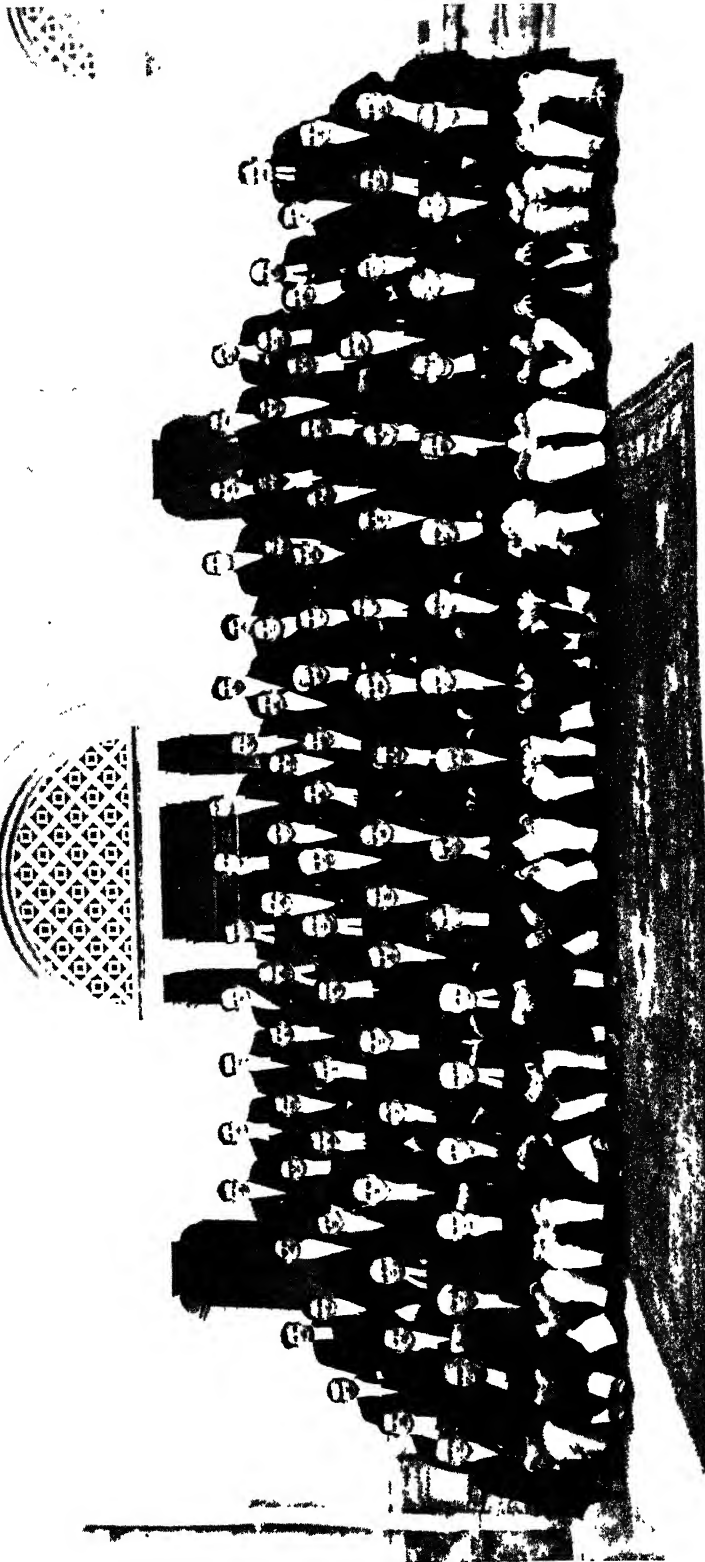
PHOTOGRAPH OF THE MEMBERS OF ALLAHABAD HIGH COURT BAR, TAKEN IN 1920
WHEN DR. T. B. SAPRU MADE LAW MEMBER



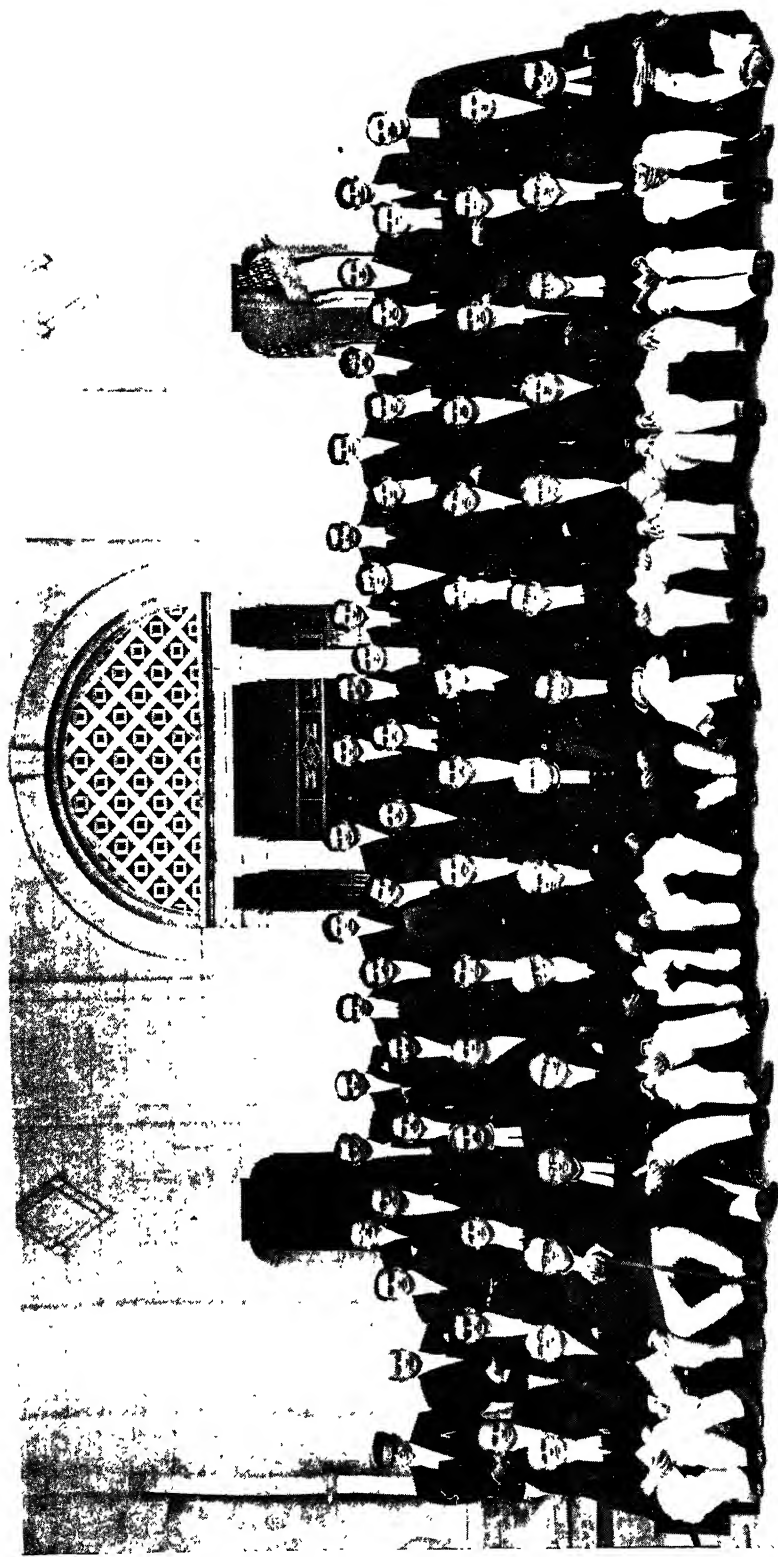
PHOTOGRAPH OF THE MEMBERS OF THE ADVOCATES' ASSOCIATION, HIGH COURT, ALIGARH, TAKEN ON THE OCCASION OF
DIAMOND JUBILEE OF PRACTICE AT THE BAR OF ITS PRESIDENT, DR. NARAIN PRASAD ASTHANA, APRIL, 1955



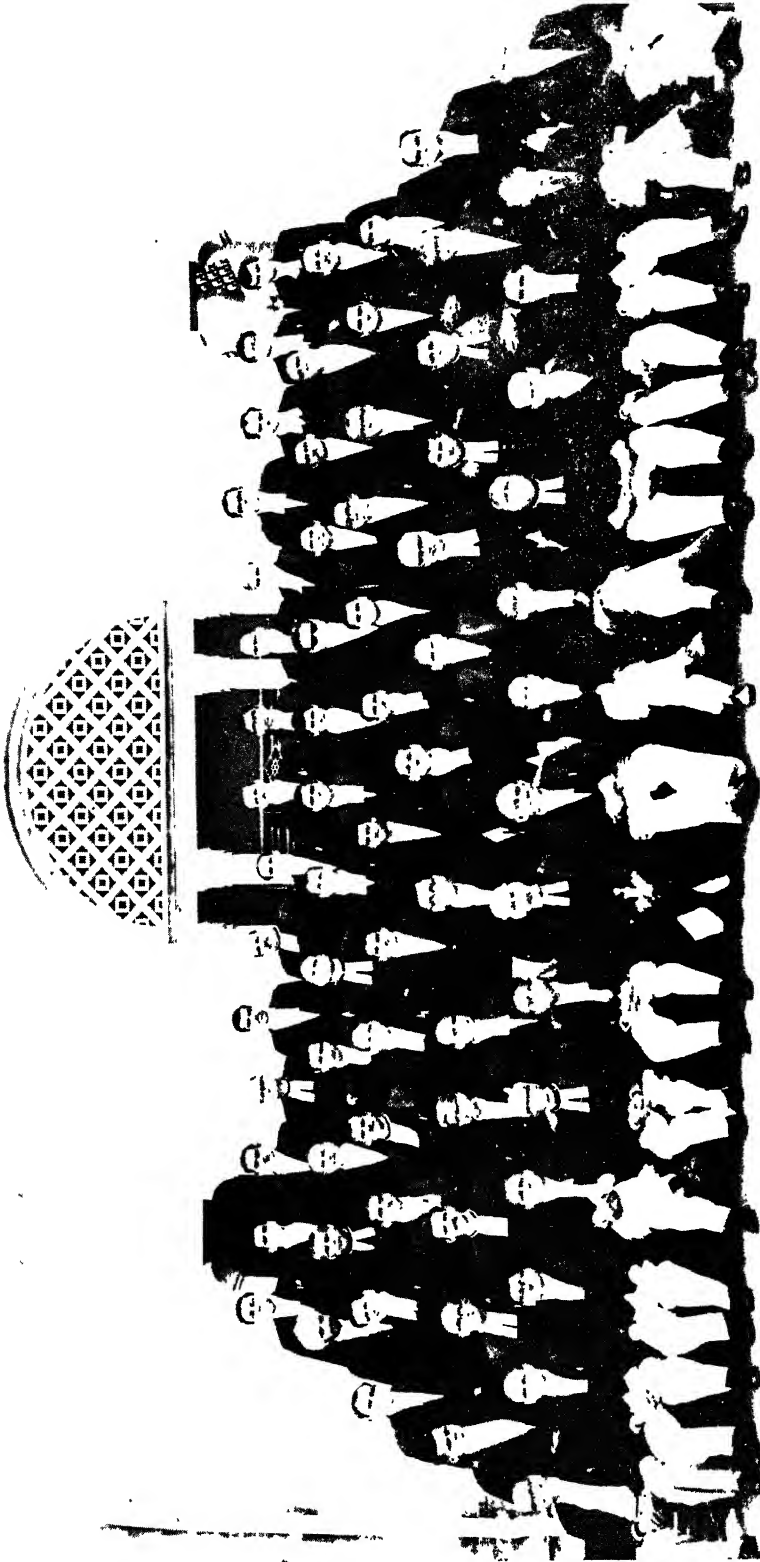
MEMBERS OF GOVERNING COUNCIL, HIGH COURT BAR ASSOCIATION, ALLAILABAD



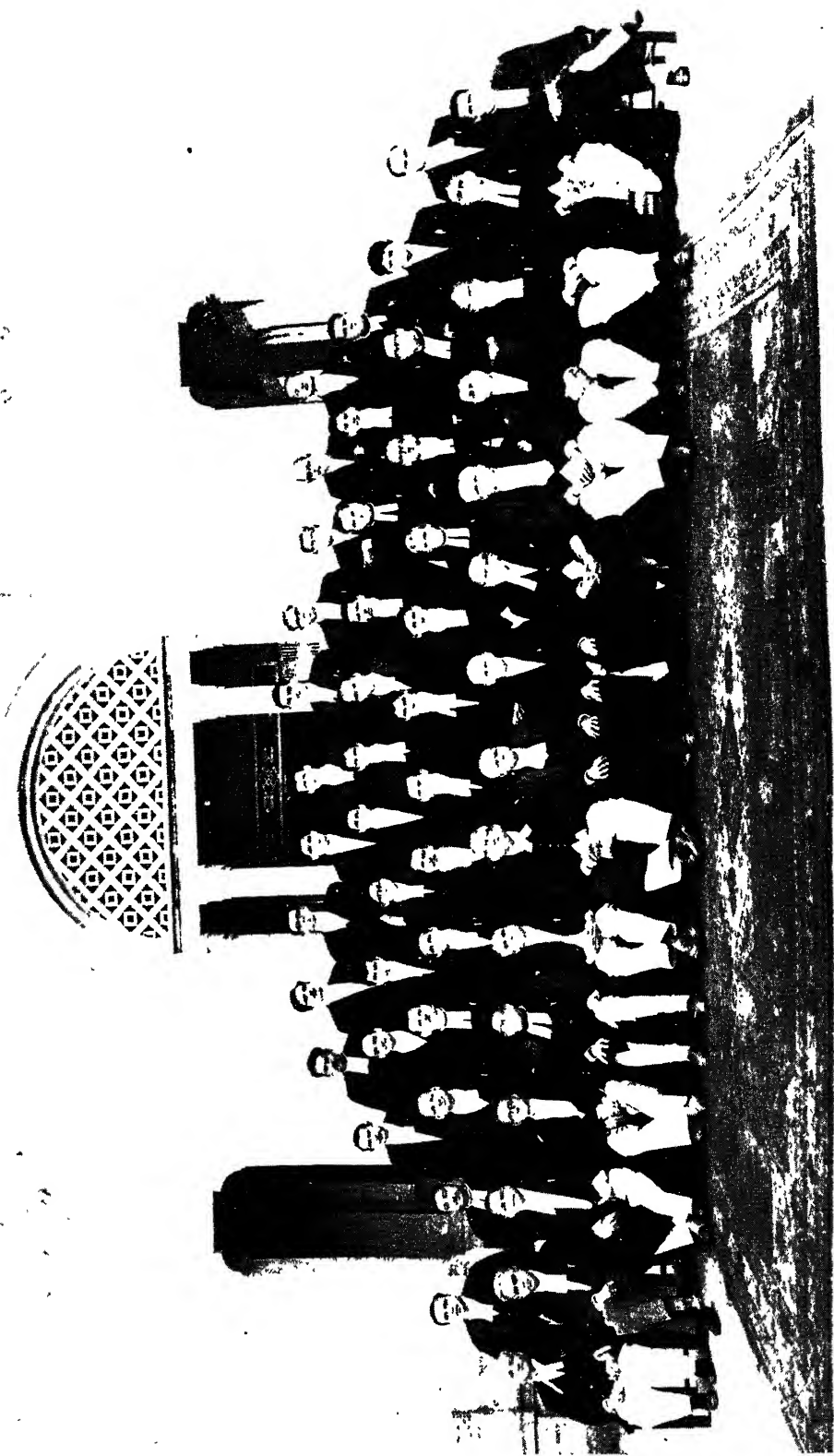
MEMBERS OF THE HIGH COURT BAR, ALLAHABAD, 1966



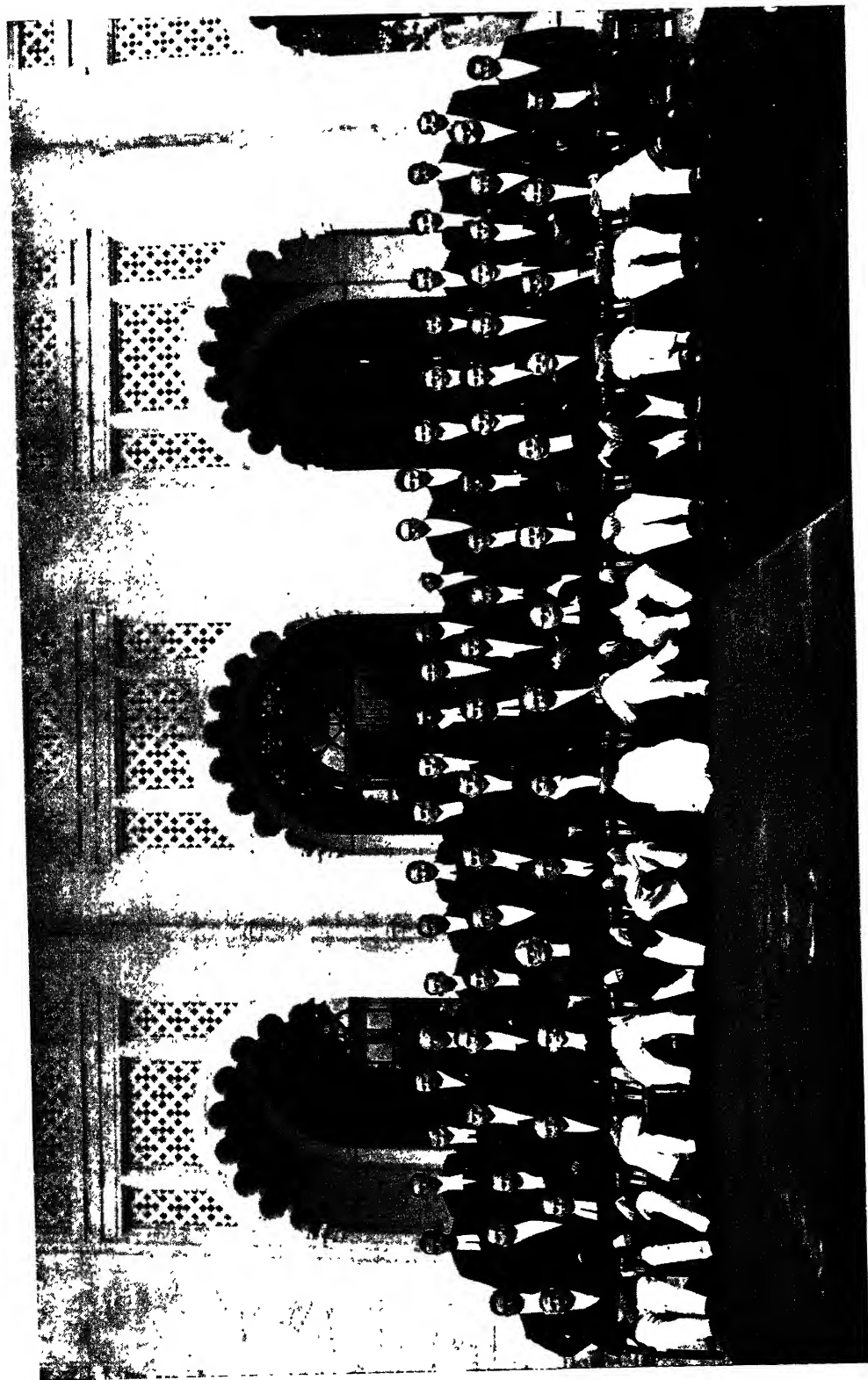
MEMBERS OF THE HIGH COURT BAR, ALLAHABAD, 1966



MEMBERS OF THE HIGH COURT BAR, ALLAHABAD, 1966



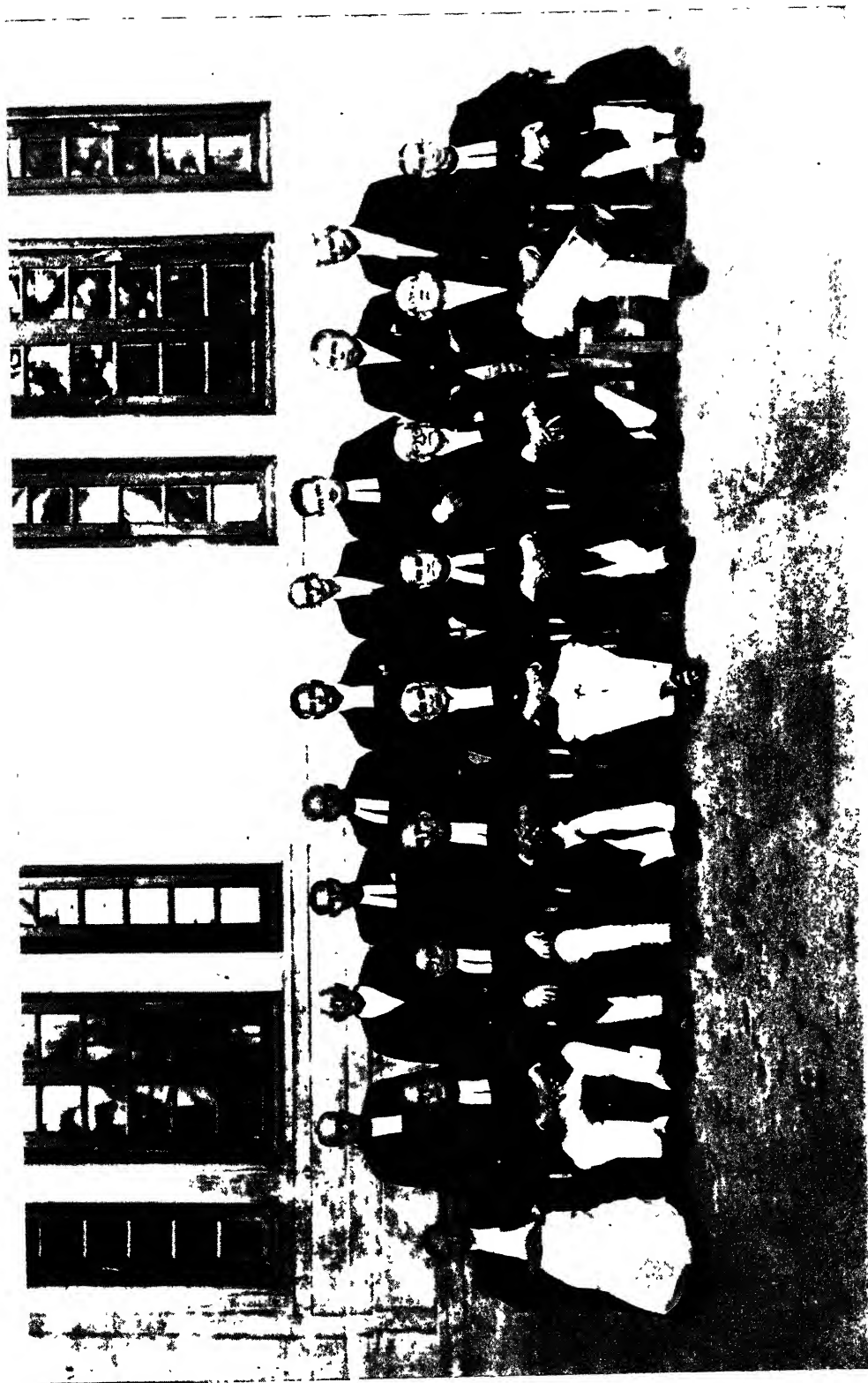
MEMBERS OF THE HIGH COURT BAR, ALLAHABAD, 1966



MEMBERS OF HIGH COURT BAR, ALLAHABAD, 1966



SRI K. L. MISRA, ADVOCATE GENERAL, U. P. AND PRESIDENT OF BAR COUNCIL, U. P.



MEMBERS OF THE BAR COUNCIL, U. P. 1966

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**PHOTOGRAPHS OF PAST PROMINENT MEMBERS
OF THE ALLAHABAD HIGH COURT BAR**

■



MUNSHI HANUMAN PRASAD

MIDDLE—*Left to right*

MR. T. CONLAN

MAULVI MEHDI HASAN
(1861)

PANDIT AJUDHIYANATH
(1862)



MUNSHI JWALA PRASAD
(1865)

PT. BISHAMBHAR NATH
(1865)



BABU PEAREY MOHAN BANERJI



MIDDLE—*Left to right:*

MR. DWARKA NATH BANERJI
(1870)

MR. G. T. SPANKIE
(1872)

MR. JOGENDRA NATH CHAUDHRY
(1872)



PANDIT NAND LAL
(1872)



PANDIT MOTI LAL NEHRU
(1883)



Top—Left to right

B. DURGA CHARAN BANERJI
(1885)

MUNSHI RAM PRASAD
(1886)

MUNSHI GOVIND PRASAD
(1886)



B. SATYA CHARAN MUKERJI
(1888)



MR. B. E. O'CONOR
(1893)



PANDIT MADAN MOHAN MALVIYA
(1893)



Top—Left to right

MR. A. E. RYVES
(1893)

DR. SATISH CHANDRA BANERJI
(1895)

SIR TEJ BAHADUR SAPRU
(1896)



MUNSHI HARIBANS SAHAI
(1896)



DR. SACHCHIDANANDA SINHA
(1896)



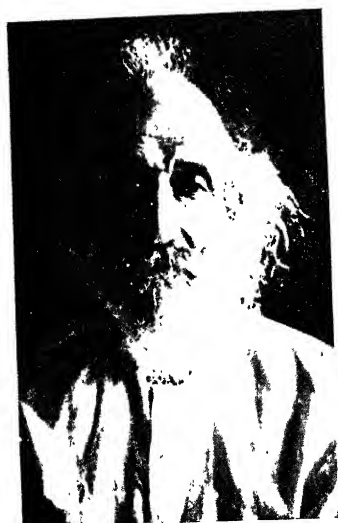
MUNSHI ISHWAR SARAN
(1900)



PT. BRIJ NARAIN GURUR
(1900)



MR. PEAREY LAL BANERJI
(1907)



SRI P. D. TONDON
(1908)

BOTTOM—Left to right

MR. A. P. DUBEY
(1908)

PT. J. L. NEHRU
(1913)

MR. SURENDRA NATH VERMA
(1918)





MIRZA YAR JUNG SAMIULLAH BEG

The oldest living member of Avadh Bar, retired Chief Justice, Hyderabad (Nizam's) High Court, President of H. E. H.'s Privy Council, some time Judicial Minister, and then Agent of H. E. H. the Nizam in Berar, whose 96th birthday was celebrated recently.



SRI H. K. GHOSH, PRESIDENT AVADH BAR ASSOCIATION, HIGH COURT,
(LUCKNOW BENCH) LUCKNOW


History of the Court in Avadh from 1856 A. D. up to Present Time

Compiled by

SRI H. K. GHOSE, *Bar-at-Law*

President, Avadh Bar Association, Lucknow

BRIEF HISTORY OF OUDH

 OUDH was annexed to the territories of the British East India Company by Lord Dalhousie, Governor General in 1856; and twelve districts: Lucknow, Bara Banki, Faizabad, Sultanpur, Hardoi, Rae Bareilly, Pratapgarh, Unnao, Gonda, Bahraich, Sitapur and Kheri were constituted into a separate Province of Oudh, under a Chief Commissioner. After some time the Civil Administration of Avadh was united under one Local Government with the districts administered by the Lt.-Governor of the North-Western Provinces; and the territories thus united became known as the North-Western Provinces and Oudh. Subsequently, by Act VII of 1902 passed by the Governor-General-in-Council [United Provinces (Designation) Act], the designation was changed into the United Provinces of Agra and Oudh.

COURTS

Ever since the said Annexation, there were separate courts to administer the laws in Oudh (Avadh) and the laws were codified by Act XVIII of 1876 (The Oudh Laws Act) passed by the Governor-General-in-Council. The Judiciary, including the highest court of appeal, was distinct from courts of the sister province of the North-Western Provinces and there were separate cadres of subordinate courts until the year 1948.

JUDICIAL COMMISSIONER'S COURT

After the Annexation, the highest court of appeal was established in Lucknow in 1856 with a Judicial Commissioner for the disposal of Civil and Criminal Cases. It continued to function for nearly 7 decades except for a short interregnum during the Mutiny of 1857-58. At first there was one Judicial Commissioner. At that unsettled time, Judicial Commissioner was not the highest court of appeal in rent and revenue cases. But there was a Financial Commissioner as the highest Court. By Act XXXII of 1871 the post of Financial Commissioner was abolished and his work was entrusted to Judicial Commissioner of Oudh (Vide S. 84). The cases in the Judicial Commissioner's Court continued to increase. In order to cope with the increasing volume of work, an Act (IV of 1885) was passed "to provide for temporary" appointment, from time to time, of an "Additional Judicial Commissioner". Subsequently, by Act XIV of 1891 (Oudh Courts Act), provision was made by Section 4 for the appointment of a permanent Additional Judicial Commissioner, equal in status but not in emoluments to the Judicial Commissioner, by the Local Government with the previous sanction of the Governor-General-in-Council. In 1897, another Act (XVI of 1897) [Oudh Courts (Amending) Act] was passed, making

provision for the appointment of a 2nd Additional Judicial Commissioner. The salary of the Judicial Commissioner was Rs.3,500 per mensem and that of the Additional Judicial Commissioner, Rs.3,333 per mensem.

In the Judicial Commissioner's Court all the Judges, from the beginning, were members of the Indian Civil Service, except Mr. R. T. Spankie, Sir Edward Chamier, Sir Mohammad Rafique, Sir Sunder Lal and Sir Wazir Hasan and Pt. G. N. Misra, officiating for a short time, who were distinguished members of the Bar and Pt. Kanhaiya Lal who was a distinguished member of the Provincial Service and who later became a Judge of Allahabad High Court.

CHIEF COURT OF OUDH

This system of Judicial administration was found inadequate and antiquated. So, in order to meet the public demand, an Act, U. P. Act IV of 1925 (Oudh Courts Act) was passed in 1925 by the U. P. Legislature with the previous sanction of the Governor-General as required by sub-section (3) of Section 80-A of the Government of India Act, 1919 "to amend and consolidate the law relating to courts in Oudh". It abolished the earlier Oudh Courts Act, and established a Chief Court for Oudh, with 5 Judges : one Chief Judge and 4 puisne Judges. Out of 5 Judges two were members of Indian Civil Service, one a member of the Provincial Judicial Service and two were from the Bar. The Chief Court had original Civil Jurisdiction for trial of suits having valuation of 5 lakhs and over under Section 7 of the said Act. This was subsequently repealed by Act IX of 1939. There was another change in the Act by modification of Section 4 of the said Act by the Government of India (Adaptation of Indian Laws) Order, 1937, whereunder it was provided that "Chief Court shall consist of a Chief Judge and such other Judges as may be appointed under the Government of India Act, 1935". Under this provision a sixth Judge was appointed in 1945 from

the Bar, who functioned up to amalgamation of the Chief Court with the Allahabad High Court, by the United Provinces High Court (Amalgamation) Order, 1948, made by the Governor-General under Section 229 of the Government of India Act, 1935, after presentation of an address by both chambers of U. P. Legislature to the Governor of U. P. which was submitted to the Governor-General. After amalgamation, the two separate courts became one Court, by the name of "the High Court of Judicature at Allahabad". It was provided by a proviso to para 14 of the Amalgamation Order that "such Judges of the new High Court, not less than 2 in number, as the Chief Justice may, from time to time, nominate, shall sit in Lucknow to dispose of cases arising in Oudh". At present there are seven Judges of the High Court stationed in Lucknow, with a Senior Judge to deal with administrative matters of the Lucknow Bench. The other Judges, including the Chief Justice, come to Lucknow for short periods from time to time and such permanent Judges of the Lucknow Bench go to Allahabad as and when nominated by the Chief Justice. Before amalgamation, the Chief Judge of the Chief Court was paid a salary of Rs.4,000, while puisne Judges, Rs.3,500 each, per mensem.

JUDGES FROM 1856—1925 (JUDICIAL COMMISSIONER'S COURT)

The first Judicial Commissioner was *Mr. M. C. Omanney*. He died on 5th July, 1857 and was succeeded by *Mr. G. Campbell* (afterwards Sir George Campbell who later became Lt.-Governor of Bengal). He continued up to 1862. He was succeeded by Sir George Couper (who afterwards became Chief Commissioner of Avadh), who worked in 1862-63.

The next Judicial Commissioner whose name is traceable from the records is *Mr. W. C. Capper* in 1870.

Mr. Charles Currie, I.C.S., was Judicial Commissioner from 1870—1877. He was succeeded by *Mr. W. C. Capper*, I.C.S. who came in 1877 and worked up to 1881. The next Judicial Commissioner was *Mr. W. Young* (who afterwards became a Judge of the Allahabad High Court). He worked as Judicial Commissioner off and on from 1884, and 1886—1889 and again in 1890-1891. *Mr. T. B. Tracy*, I. C. S., officiated in 1884-85 during the absence of *Mr. Young*. Another distinguished Judge *Dr. W. Dutboit*, I.C.S., D.C.L. (who was a Judge of the Allahabad High Court for a while in 1881) was Judicial Commissioner from 1882—86.

Mr. John Dyson, I.C.S., was at first Additional Judicial Commissioner when *Mr. Young* was Judicial Commissioner and officiated as Judicial Commissioner in 1889-90. *Mr. W. B.* (afterwards *Sir William Burkitt*), I.C.S. was Additional Judicial Commissioner in 1890-91 and Judicial Commissioner in 1891—95. He then went to Allahabad High Court as a Judge and was there up to 1908. *Dr. M. S. Howell*, LL.D., C.I.E., was Additional Judicial Commissioner in 1891—93, when he became Judicial Commissioner and continued up to 1896. In 1892 *Mr. G. T. Spankie* a Barrister practising in Lucknow was appointed an Additional Judicial Commissioner. This was the first appointment from the Bar. *Mr. Spankie* was in the Court up to 1903, after becoming Judicial Commissioner in 1895. *Mr. H. F. Evans*, I. C. S., was an Additional Judicial Commissioner in 1893. *Mr. William Blennerhassett*, I.C.S. was an Additional Judicial Commissioner in 1896 and Judicial Commissioner in 1897-98. *Mr. John Deas*, I.C.S., was Additional Judicial Commissioner and later Judicial Commissioner between 1894—1900. In 1898 *Mr. E. M. D.* (afterwards *Sir Edward Chamier*) a distinguished Barrister practising in Lucknow, was appointed II Additional Judicial Commissioner. He later became Judicial Commissioner in 1904 and was in Lucknow Court up to 1911 when he went to Allahabad High Court as a Judge and later became a Chief Justice of the Patna High Court and after retirement therefrom became the

Solicitor and Legal Adviser to the Secretary of State for India in Council in London. *Mr. Ross Scott*, I. C. S., was appointed 2nd Additional Judicial Commissioner in 1895 and ultimately became Judicial Commissioner and retired in 1907. *Mr. Mcleod*, I. C. S., officiated as Judicial Commissioner in 1901-1902. *Mr. Wells*, I.C.S., was Additional Judicial Commissioner in 1904-1905. *Mr. Ryves*, Barrister, practising at Allahabad was an Additional Judicial Commissioner in 1905. He afterwards became a Judge of the Calcutta, Lahore and Allahabad High Courts. *Mr. H. D. (afterwards Sir Henry) Griffins*, I.C.S., was an Additional Judicial Commissioner in 1907-1908 and later became a Judge of the Allahabad High Court, where he was up to 1914. *Mr. Sanders*, I.C.S., was Additional Judicial Commissioner in 1907. *Mr. L. C. Evans*, I.C.S., was Additional Judicial Commissioner and later Judicial Commissioner from 1906—1911. *Mr. B. Greeven*, I.C.S., was Additional Judicial Commissioner in 1907-1908. *Dr. Sir Sunder Lal*, C.I.E., an eminent lawyer of Allahabad was appointed an Additional Judicial Commissioner in 1909. *Mr. W. (afterwards Sir William) Tudball*, I.C.S., was Additional Judicial Commissioner in 1909 and later he went as a Judge to the Allahabad High Court where he was up to 1922. *Mr. T. (afterwards Sir Theodore) Piggott*, I.C.S., was Additional Judicial Commissioner in 1908 and later became Judicial Commissioner. In 1914 he became a Judge of the Allahabad High Court. *Mr. Rafique (afterwards Sir Mohd. Rafique)*, Barrister-at-law, became an Additional Judicial Commissioner in 1911 after serving as Civil and District Judge (by direct appointment) for a few years in Oudh and in 1912 went to Allahabad High Court as a Judge. After retirement in 1923, he was appointed a member of the Council of the Secretary of State for India in London. *Mr. B. (afterwards Sir Benjamin) Lindsay*, I.C.S., was Additional Judicial Commissioner in 1910 and later became Judicial Commissioner up to 1921, when he went to Allahabad High Court and retired in 1923. After retirement he became a Reader of Law in Oxford

University. *Pt. Kanbaiya Lal*, brother of Dr. Sir Sunder Lal was the first member of the Provincial Judicial Service to be appointed an Additional Judicial Commissioner in 1912 and after serving in the Lucknow Court up to 1924, as Additional Judicial Commissioner and officiating Judicial Commissioner went to Allahabad High Court and retired in 1926. *Mr. L. Stuart* (afterwards *Sir Louis Stuart*), I.C.S., was successively Additional Judicial Commissioner and Judicial Commissioner up to 1922, when he went to Allahabad High Court, but returned to Lucknow as the first Chief Judge of the Chief Court in 1925 and retired in 1930. *Mr. Sabonodiere*, I.C.S. was an Additional Judicial Commissioner in 1913. *Mr. S. Mobammad Ali*, I.C.S., was an Additional Judicial Commissioner in 1915-1916. *Mr. E. A. Kendall*, I.C.S., officiated as an Additional Judicial Commissioner in 1916. *Mr. S. R. Daniels*, I.C.S., was an Additional Judicial Commissioner and later Judicial Commissioner from 1916-1925, when he went to Allahabad, wherefrom he retired in 1928. *Mr. D. R. Lyle*, I.C.S., was Additional Judicial Commissioner in 1919-1922. *Mr. E. H. Ashwarth*, I.C.S., was Additional Judicial Commissioner in 1919 and again from 1922, and later became one of the first Judges of the Chief Court and thereafter went to Allahabad High Court as a Judge. *Mr. B.* (afterwards *Sir Barjor*) *Dalal*, I.C.S., was an Additional Judicial Commissioner from 1920 and was the last Judicial Commissioner of Oudh, and went to Allahabad in 1925 and retired therefrom in 1931. After retirement he became Chief Justice of the Kashmir High Court. *Mr. Wazir Hasan* (afterwards *Sir Wazir Hasan*) a distinguished member of the Oudh Bar was the first member of the Oudh Bar to be appointed an Additional Judicial Commissioner in 1921, continued up to the establishment of the Chief Court when he became one of its first Judges. He became Chief Judge of the Chief Court in 1930 and retired in 1934. *Mr. Simpson*, I.C.S., was an Additional Judicial Commissioner in 1922-1925. *Mr. E. R. Neave*, I.C.S., was an Additional Judicial Commissioner in 1922-1925. He officiated as a Judge of Allahabad High

Court in 1924. *Mr. C. H. B. (afterwards Sir Charles) Kendall*, I.C.S., was an Additional Judicial Commissioner in 1924 and later became a Judge of the Chief Court up to 1929 when he went to Allahabad High Court and was there up to 1935 when he was killed in a motor accident on the way to Naini Tal. *Pt. Gokaran Nath Misra*, an eminent Advocate of the Oudh Bar, officiated as an Additional Judicial Commissioner in 1925. He was one of the first Judges of the Chief Court after its establishment in the same year. *Mr. A. G. P. Pullan*, I.C.S., officiated as an Additional Judicial Commissioner in 1924. Subsequently he became a Judge of the Chief Court.

JUDGES: (CHIEF COURT OF OUDH, NOVEMBER 1925—48)

FIRST JUDGES

1. Hon'ble Sir Louis Stuart, I.C.S., Kt., First Chief Judge, November 1925, retired on 12th February, 1930.

2. Hon'ble Sir Wazir Hasan, (formerly Additional Judicial Commissioner) officiated as Chief Judge in 1929 and became Chief Judge in 1930, retired on 14th May, 1934.

3. Hon'ble Mr. E. H. Ashworth, I. C. 's., (formerly Additional Judicial Commissioner) subsequently Judge of Allahabad High Court from 1926—39.

4. Hon'ble Pt. Gokaran Nath Misra, Advocate, formerly officiating Additional Judicial Commissioner, 1925, died on 5th July, 1929.

5. Hon'ble Mr. Mohammad Raza, P.C.S., 1925, retired on 18th January, 1934.

6. Hon'ble Mr. Justice C. H. B. Kendall (afterwards Sir Charles Kendall), 1926.

7. Hon'ble Mr. Justice C. Moss King (afterwards Sir Carleton Moss King), I.C.S., C.I.E., from 9th October, 1926 to 4th May, 1927 when he went to Allahabad, but returned as Chief Judge in 1934 and retired in 1936.

8. Hon'ble Mr. Justice A. G. P. Pullan, I.C.S., officiated in January 1928 and again from 28th October, 1928, again in 1929 when he was made permanent. In 1931 he went to Allahabad and then retired in 1933.

9. Hon'ble Mr. Justice E. M. Nanavutty, I.C.S., officiated in 1928, and again in 1929, became permanent Judge from 19th December, 1930, retired in 1937.

10. Hon'ble Mr. Justice Bisheshwar Nath Srivastava, O. B. E., an Advocate (officiated from July to October, 1928), permanent Judge from 19th July, 1928 after the death of Hon'ble Mr. Justice G. N. Misra, became Chief Judge after Sir Carleton Moss King in 1936 and died in July, 1938.

11. Hon'ble Mr. Justice B. S. Kisch, I.C.S. (officiated from 21st January, 1931 and again from 1st January, 1932 to 1st October, 1932.

12. Hon'ble Mr. Justice Smith, I.C.S. (officiated from 21st October, 1931, again from 10th October, 1932 to December 31, 1932, 1933, again in 1934-35, again Judge of Oudh Chief Court 1936-37, died on 18th December, 1937.

13. Hon'ble Mr. Justice J. J. W. Allsop, I.C.S., officiated 1933-35.

14. Hon'ble Mr. Justice Rachhpal Singh, Barrister-at-law, officiated in 1934, later went to Allahabad High Court, after retirement therefrom went to Kashmir as a Judge of High Court.

15. Hon'ble Mr. Justice G. H. (afterwards Sir George) Thomas, Barrister-at-law, formerly first Government Advocate of Chief Court. from May, 1934, later became Chief Judge after the death of Sri B. N. Srivastava on 23rd July, 1935 and retired 22nd June, 1946.

16. Hon'ble Mr. Justice Ziaul Hasan (a member of the Provincial Judicial Service) from 30th July, 1934, officiated as Chief Judge from 12th July to 11th August, 1939, retired on 16th December, 1940.

17. Hon'ble Mr. Justice A. H. De, B. Hamilton, I.C.S. (1937-40).

18. Hon'ble Mr. Justice W. Y. Madeley, I.C.S. (1937—42).

19. Hon'ble Mr. Justice R. L. Yorke, I.C.S. (1938), officiated as Chief Judge from 25th February, 1941 to 12th March, 1941 and later went to Allahabad High Court.

20. Hon'ble Mr. Justice J. R. W. Bennett, I.C.S. (1939—44), retired in 1947 from Allahabad.

21. Hon'ble Mr. Justice Radha Krishan Srivastava, an Advocate, a member of the Oudh Bar from July, 1939, died on 12th May, 1940.

22. Hon'ble Mr. Justice Ghulam Hasan, a member of the Oudh Bar from September, 1940, and later became a Chief Judge on 23rd June, 1940, became a Judge of the High Court after amalgamation. After retirement in May, 1951, became a Judge of the Supreme Court.

23. Hon'ble Mr. Justice P. C. Agarwal, P.C.S., (16th November, 1940 to 10th May, 1943).

24. Hon'ble Mr. Justice L. S. Misra, (14th May, 1943) acting as Chief Judge in September-October, 1947, became a Judge of the Allahabad High Court on 28th July, 1948 and later went as Chief Justice of Hyderabad High Court.

25. Hon'ble Mr. Justice P. K. Kaul, P.C.S., formerly member of the Oudh Bar but joined Judicial Service ; appointed on 4th December, 1944, became a Judge of the Allahabad High Court on amalgamation on 28th July, 1948, retired therefrom and later became Chief Justice of Madhya Bharat High Court.

26. Hon'ble Mr. Justice H. G. Walford, Barrister-at-law, Additional Judge from 12th July, 1946 to 28th July, 1948.

27. Hon'ble Mr. Justice M. H. Kidwai, Barrister-at-law, appointed Judge on 12th July, 1948, became Judge of the Allahabad High Court on amalgamation on 28th July, 1948, was in Lucknow as Senior Judge until his death in Court on 19th February, 1957.

28. Hon'ble Mr. Justice Raghubar Dayal, I.C.S., Acting Judge from 28th March, 1946, afterwards Judge of the Allahabad High Court and of the Supreme Court.

29. Hon'ble Mr. Justice S. B. Chandiramani, I.C.S., July 1947, afterwards Judge of Allahabad High Court on amalgamation, died on 21st May, 1952.

LAW REPORTS

(Cases Decided by the Avadh Court)

As the history of the Court is not complete without reference to reports of cases decided by the Judges of the Court, a short note of the Law Reports published in Lucknow is necessary. Originally there were no authorised law reports as contemplated by the Indian Law Reports Act, 1876, of cases decided by the Court of the Judicial Commissioner. But the decisions of Judicial Commissioners and Financial Commissioners were published with their approval as "Select Cases". Considering that the Case-law and precedents were not as numerous as it is today, the exposition of law in some of these cases is very good, and many of them had been approved by the Privy Council. Of course there were some very eminent lawyers who assisted the Courts with their learned arguments. We may remember that the Judicial Commissioner and the Financial Commissioner were not trained lawyers, but members of the Indian Civil Service, even though some of them got called in the Bar in England and two were doctors of law. Therefore, the outturn of their work at that time is very creditable. Amongst the Financial Commissioners whose decisions are contained in the "Select Cases" two distinguished members who left their mark, are Mr. R. H. Davis and Col. L. Barrow.

Oudh Cases

The first authorised report of the cases decided by the Court of Judicial Commissioner was published in 1898 under the nomenclature of "Oudh

Cases" published with the authority of the Judicial Commissioner, and it was continued up to the establishment of the Chief Court in 1925. The first Editor (then styled Reporter) was the distinguished lawyer and public man Pandit Bishan Narain Dar, Barrister-at-law, who was later assisted by Shri (later Sir) Bisheshwar Nath Srivastava (afterwards Chief Judge of the Chief Court). The latter continued the work as Chief Reporter after the death of Pandit Bishan Narain Dar in 1916, assisted by Junior lawyers amongst whom the name of Pandit P. K. Kaul, who afterwards became a Judge of the Chief Court and High Court may be mentioned.

O. L. J.

There were other unauthorised reports during this period ; "Oudh Law Journal" (O. L. J.) from 1914—1926 with St. George Jackson, Barrister-at-law, President of the Oudh Bar Association and Pandit Gokaran Nath Misra (afterwards Hon'ble G. N. Misra, Judge of the Chief Court) as editors. This Journal stopped publication after the establishment of the Chief Court.

O. W. N.

Oudh Weekly Notes (O. W. N.) with the late Mr. A. P. Sen, President of the Oudh Bar Association, as Editor and Chaudhari Hyder Husain, Barrister-at-law, the present President of the same association as Joint Editor were published from 1924. After the death of Mr. A. P. Sen, in 1934, Chaudhari Hyder Husain became Chief Editor and continued the publication up to the amalgamation of the Chief Court with the High Court at Allahabad. Both these publications (O. L. J. and O. W. N.) rendered very valuable assistance to the Bar and Bench, as they published decisions earlier than the authorised reports "Oudh Cases" and sometimes gave arguments of counsel in the cases reported. They also published decisions of the Board of Revenue and Privy Council. They also had notes and comments of cases decided by

the Court and statutes and articles on important questions of law, and references to Judges on their elevation and retirement, and obituary notes on Judges and lawyers.

O. & A. L. R.

There was a third Law Journal, "Oudh and Agra Law Reporter" (Abbreviation O. L. R.) in 9 volumes, published by a retired member of the Judicial Service who joined the Bar, Mr. H. C. Sen. After his death, the publication ceased.

I. L. R., Lucknow

After the establishment of the Chief Court, the official reports "I. L. R. Lucknow Series" were published from 1925-26. To this publication Indian Law Reports Act, 1876 was made applicable by amendment of Section 2 by adding "Chief Court of Oudh" after the High Court by A. O.

There was a Committee of Law Reporting headed by a Judge of the said Court with 4 nominated members of the Bar, whose approval was necessary before publication of a decision. There was an editor appointed by the Court. One of the Editors was the late Mr. Justice Ghulam Hasan.

After the amalgamation of the two Courts I. L. R., Lucknow Series have ceased, but there is a special reporter for the Lucknow Bench of the Court.

SPECIAL LAW ADMINISTERED IN OUDH AND SOME ILLUSTRATIVE CASES

The Court of Judicial Commissioner, Chief Court and the courts subordinate to them had to decide one class of cases which is unique in the whole of India, viz. cases of succession, etc. arising under the Oudh Estates Act, 1869 (popularly known as Taluqa cases).

The history and back ground of the system of Taluqdari is given in a classical work "Compendium of Law specially relating to Taluqdars of Oudh" by Mr. J. G. W. Sykes, LL.B., Barrister-at-law, a distinguished practitioner in the court of Judicial Commissioner in the early days, which can be referred to and studied by persons interested. It may briefly be stated that after the reoccupation of Oudh by the British in 1858, after the Mutiny, the policy of the British administrators was to create a class of landholders like the Barons in England on the nucleus of landlords under the Kings and Nawabs of Oudh who would be their bulwark against the peasants, whom they considered undependable by their recent experience, as the peasants readily joined the Mutiny. After the Mutiny Lord Canning the British Governor-General by his proclamation dated 15th March, 1858, confiscated the proprietary soil in Oudh to the British Government except 6 estates specifically mentioned, viz. Balrampur, Katiari, Padnaha, Sissendi, Gopalkhera and Moraon (Baiswara) who were rewarded for their "Loyalty" during the Mutiny. Thereafter summary settlement was made as an act of pacification between 1st April, 1858 and 10th May, 1859 by granting Taluqdari Sanads, to persons who laid down their arms and showed contrition, on the terms and conditions therein stated. But the position of tenantry remained precarious and most of them were tenants at will of the landlords. Ultimately in 1869 the Oudh Estates Act (I of 1869) was passed "to define the rights of Taluqdars and others, in certain estates in Oudh (including those which were excluded from confiscation proclamation of Lord Canning hereinbefore mentioned)" and to regulate their succession thereto. This Act made special provisions for succession (e.g. single heir and primogeniture, exclusion of women, adoption, will, transfer, etc.). Even in the case of succession by eldest son, preference was given to the son who is *najibultarafain* (of good family on both sides) an instance whereof will be given below. This Act proved a veritable apple of discord like the proverbial Pandora's Box and gave rise to a plethora of litigation and hardly any estate in Oudh escaped expensive

litigation. In some instances there was more than one litigation after the opening of succession by the death of the last male holder. The Act was so badly drafted that it was often difficult to interpret its provisions. A large number of cases went to Privy Council. The reports of numerous cases both in the Privy Council and in the Courts of Oudh from the earliest times demonstrate the difficulty of interpreting and of giving effect to the provisions of this Act.

In the days of Judicial Commissioners, Special Judges were appointed from the ranks of Senior members of the Provincial Judicial Service for trial of the Taluqa cases, which often lasted years, involving heavy expenses, as often senior and eminent members of the Bar of Oudh and from outside were engaged. In order to simplify the procedure and curtail the time and expenses, Oudh Courts Act, 1925, made provision for trial of these Taluqa cases (which always involved property worth more than 5 lacs) on the original side. After the abolition of the original side in 1939 these cases reverted back to the jurisdiction of Civil Judges as before. One of the last cases, if not the very last, was Sissendi Taluqa case tried by Mr. P. K. Kaul (afterwards Mr. Justice Kaul of the Chief Court and High Court).

SOME NOTABLE CASES

(1) UNDER THE OUDH ESTATES ACT

Khwaja Ahmad Khan vs. Musammat Hurmuzi Khanam and others (8.O . L. J. 27), decided by B. L. Lindsay, J. C. and S. R. Daniels, A. J. C. in 1920, on appeal from the judgment of S. Mohammad Raza (afterwards Hon'ble Raza, J. of the Chief Court).

This case illustrates the difficulties of interpretation of the provisions relating to succession to the "Estate", as sometimes quaint expressions were used. In this case a younger son of a deceased Taluqdar Mohammad Ahmad Khan, who had 8 wives and a numerous progeny claimed the property in preference to the other older sons of the deceased, on the ground that he

was the eldest *najibultarafain* son of his father in preference to other sons of the deceased older than him as they were not qualified to take the estate as heir under the Oudh Estates Act not being *najibultarafain*. In this case the question was what is *najibultarif*, which literally means noble ancestry of both the parents. Evidence was led that mothers of the other older sons of the deceased, could not claim unbroken noble ancestry of the same status as Mohammad Ahmad Khan. There was a large volume of evidence and S. Mohammad Raza (who afterwards became a Judge of the Chief Court) dismissed the suit. The appeal was heard by a Bench consisting of Sir Benjamin Lindsay one of the most distinguished Judges of the Court and Mr. Daneils. Mr. A. P. Sen who with H. K. Ghose and Syed Zahur Ahmad appeared for the Plaintiff-Appellant argued that if there was any taint of inferior status on either side he would not be *najibultarafain*. Mr. Gokaran Nath Misra and Mr. Bisheshwar Nath, both of them afterwards distinguished Judges of the Chief Court, assisted by other lawyers argued for the respondents. The Court held that "Najibultarafain" meant persons of good family on both sides.

(2) SISSENDI TALUQA CASE

Chandra Kishore Tewari and others vs. D. C., Lucknow in charge of Court of Wards, Sissendi Estate and Vijai Kumar.

L. R. 76 I. A. 17—On Appeal from A. I. R. 1947 Oudh 180.

This case presents many unique features as (a) the Estate is one of the 6 estates exempted from Lord Canning's Confiscation Proclamation, after the Mutiny, (b) another feature not uncommon elsewhere, is, that it was financed litigation by impecunious reversionary claimants to the Taluqa when succession was opened, (c) historic significance, as it was the last case under the Oudh Estates Act filed in the Chief Court but tried before a Special Civil Judge, after the abolition of the original side of the Chief

Court, (d) the last case conducted by the great lawyer Rt. Hon'ble Sir Tej Bahadur Sapru.

The litigation started by a suit filed on October 7, 1937, by two sons of the brother of Raja Kashi Prasad, the first Taluqdar of Sissendi, with whom summary settlement was made after the Annexation of Oudh and whose name was entered in lists 1, 2 and 5 prepared under section 8 of the Oudh Estates Act, after the death of Rani Subhadra Kumari, widow of Raja Chandra Sekhar, the adopted son of Raja Kashi Prasad, which took place on November 13, 1934. Normally the plaintiffs would have been entitled to the properties, the elder brother to the Taluqa and both the brothers to other properties moveable and immoveable. But Rani Subhadra Kumari before her death adopted Vijay Kumar, a grandson of her brother on July 14, 1929 under "the consent in writing" which was necessary for adoption under the provisions of Oudh Estates Act, though not under the Hindu Law. This consent was alleged to have been given to her by Raja Chandra Sekhar who separated from her early in their married life, in 3 letters in 1889. The plaintiffs challenged the validity of the adoption on the ground that the Raja Chandra Sekhar whose relationship with his wife was bitter and who was of unsound mind, did not give his consent, far less "consent in writing" and the three letters of 1889 were spurious and manufactured. As the plaintiffs had no money, they transferred a portion of the properties in the name of Parbati Devi, mother of a senior leading lawyer of Bara Banki in consideration of an agreement to finance the litigation. This lady died and the said lawyer carried on the litigation as a party. The suit was filed in the original side of the Chief Court and issues were framed by Hon'ble Hamilton, J. But when the original side was abolished by Act IX of 1939, the case was transferred to the court of Mr. P. K. Kaul (afterwards Mr. Justice Kaul) then additional Civil Judge, Lucknow. The case was hotly contested by the Court of Wards which was in charge of the property since 1897, when the Raja was found to be of unsound mind. Vijaya Kumar, the adopted son,

was also a party. There were protracted hearings and eminent lawyers like Sir Tej Bahadur Sapru and Dr. K. N. Katju, represented the Court of Wards. Mass of evidence, documentary and oral including 2 handwriting experts were produced on both sides. Mr. Kaul by his judgment dated March 21, 1940 decreed plaintiff's suit holding that there was estrangement between the Raja and the Rani 2 or 3 years after their marriage, which continued throughout his life and it was highly improbable that the Raja wrote the 3 letters to adopt to the Rani and therefore, the adoption was invalid for want of "consent in writing". The defendants' appeal was first heard by a Bench consisting of Hon'ble C. Hasan and Walford, JJ. before Sir Tej Bahadur Sapru assisted by Pandit S. K. Dar, H. K. Ghose (Government Advocate) and others argued the appeal on behalf of defendants-appellants and Mr. Wasin (afterwards Advocate General of U. P. and Pakistan) assisted by Mr. M. H. Qidwai (afterwards Kidwai, J.) and K. P. Misra and others argued on behalf of plaintiffs-respondents. There was a difference of opinion, Hasan, J. being for dismissal of appeal, Walford, J. in favour of allowing the appeal and hence Full Bench was constituted under S. 13 (2)(6) of the Oudh Courts Act, 1925. As no independent judge was available to constitute a Full Bench, the Chief Judge (Hon'ble Thomas, J.) constituted a Full Bench with himself and the said 2 judges. Before the Full Bench Sir Tej Bahadur Sapru was not available on account of illness. So Shri S. K. Dar argued on behalf of the appellants and the same counsel appeared for the respondents as before. Hon'ble C. J. agreed with Walford, J. in his dissentient judgment and the appeal was allowed and plaintiffs' suit dismissed in accordance with their opinion, on May 10, 1946, though Hasan, J. still adhered to his earlier opinion. The plaintiffs filed an appeal before the Privy Council. The appeal was argued twice. After the first argument their Lordships on July 28, 1948, modified the decree of the Chief Court by directing defendants to deliver 4 items of property to plaintiffs with mesne profits, though they accepted the opinion of Chief

Judge and Walford, J. on material points and remitted the case to Chief Court for determination of mesne profits. After further arguments on February 1, 1949 their Lordships modified their earlier order allowing more villages to plaintiffs, and costs and moveable properties and some promissory notes. The result was that plaintiffs' claim to Taluqdari was dismissed, but their claim to other immoveable and moveable properties was allowed. The dispute is still going on in execution proceedings.

The most important Civil Case of far reaching importance on the tenantry in U. P. particularly of Oudh is what is generally known as "Tenancy Act Case".

(3) TENANCY ACT CASE

Jagannath Bux Singh versus The United Provinces L. R. 73 I. P. 123. [1947 O.W. N. 70 (P. C.) on appeal from 1944 O.W.N. 15. F. C.]

Plaintiff Jagannath Bux Singh who was a Taluqdar of the District of Sultanpur instituted a suit in the Court of Civil Judge, Sultanpur as a test case to challenge the validity of the U. P. Tenancy Act, 1939, or at least certain provisions numbering 42, which repealed Oudh Rent Act, 1876 and Agra Tenancy Act, 1901 which heretofore regulated the relations between landlord and tenant. The plaintiff was a Taluqdar governed by the Oudh Estates Act, his estate being entered into no. 241 in List no. 1 and 108 of list 2 of lists prepared under section 8 of the said Act, whose estate according to the custom of the family devolved on a single heir. He was a direct descendant of Babu Sitla Bux Singh, who obtained a Sanad from the Governor-General, after the Mutiny granting full proprietary, permanent and heritable rights to the properties conferred by the Sanad. The plaintiff alleged that the provisions of the Act which *inter alia* granted heritable and transferable rights to the tenants in Oudh, derogated from the rights conferred on him and other Taluqdars who obtained estates under the Sanads with absolute rights and hence it was beyond the competence of the U. P. Legislature to make laws curtailing their rights. The suit was

withdrawn to the Chief Court in its original Civil Jurisdiction and was tried by Hon'ble Madeley, J. Sir Wazir Hasan (who resumed practice after retirement) with Sri Shekhar Saran appeared for plaintiff, Dr. N. P. Asthana, Advocate-General of U. P. and H. K. Ghose, Government Advocate and Standing Counsel represented the State of U. P. Hon'ble Madeley, J. repelled the contention and dismissed plaintiff's suit for declaration, in a very lucid and exhaustive judgment. Plaintiff appealed to the Federal Court of India then in existence, on the ground that it involved substantial question of law of interpretation of the Act. Mr. P. L. Banerji who later became Advocate-General of U. P. and Mr. M. H. Qidwai (who later became a Judge of the Chief Court and High Court) appeared for the plaintiff-appellant and the same counsel who represented the State before the trial Court appeared before the Federal Court. Hon'ble Sir Maurice Gwyer, C. J., Varadachariar and Zafrullah Khan, JJ. by their very learned judgment dismissed the appeal on April 22, 1943 (vide 1944 O. W. N. 15). The plaintiff was undaunted by his failure in 2 Courts and took the case to Privy Council by obtaining leave from the Federal Court. He had no better luck there and judgments of the Chief Court and Federal Court were upheld by the Privy Council on May 1, 1946 (vide 1947 O. W. N. 70): L. R. 73 I. A. 123).

CRIMINAL CASES

(1) *Revolutionary Conspiracy Case*

Ram Prasad and others versus K. Emp. (known as Kakori train dacoity and conspiracy case).

Lucknow cases 339. I. L. R. 1 Lucknow.....

In this case 24 persons were prosecuted under section 121-A, I. P. C. and section 120-B, I. P. C. for conspiracy to end British rule in India and under section 396, I. P. C. for committing dacoities to raise money for fur-

therance of their design. These decoities were 4 in number, viz. (i) at Bamrauli in the district of Pilibhit in the Christmas night 1924 (December 25, 1924), in the house of a prosperous money-lender and Sugar Factory owner in the course of which a wrestler who challenged them was shot dead, (ii) at Bichpuri also in the district of Pilibhit in the house of a rich Kurmi on March 9, 1925 in which one person was killed, (iii) at Dwarkapur in the district of Pratapgarh on May 25, 1925 in the house of a Vaish, in which a villager lost his life, (iv) the most sensational train dacoity on August 9, 1925 after 7 p.m. on a train (8 Down) of the East Indian Railway (now Northern Railway) proceeding towards Lucknow, after it left Kakori Railway Station 8 miles from Lucknow, near the distant signal when the train was stopped by some one pulling the communication cord of alarm signal and some persons got out of the train, overpowered the Guard and called upon the passengers not to stir out as their property would not be looted, and no harm would come to them for they were out take "Government Property", they then broke open the safe in the brake van, maintained a fusillade of shots which hit and killed a lawyer Ahmad Ali, who left the carriage inspite of the warning and the attackers got away with Rs. 4,553-3-6 as from the safe. After the train dacoity the Government became suspicious of a conspiracy as the arms and ammunitions found at the various scenes of occurrence were similar and as train hold up was unusual. Investigation entrusted to a very experienced and highly placed officer of C. I. D. revealed that there was a widespread conspiracy of educated people mostly young and some teenagers and students who formed a revolutionary party "to establish Federal Republic of the United States of India by organised and armed revolution". They collected arms and ammunitions, committed dacoities to raise funds for the purpose and printed and distributed pamphlets appealing to their countrymen to rise against the British and drive them out. Amongst the papers seized was a pamphlet pointing out official terrorism and another pamphlet containing the prospectus and constitution of

the Hindustan Republic Association and rules and regulations for whole of India. Out of the persons arrested, of the first batch, one was discharged by the committing Magistrate and 21 were committed to Sessions and tried by Mr. Hamilton (afterwards Hon'ble Hamilton, J.) who was appointed Special Judge. Subsequently two others, Ashfaqullah and Sachindra Nath Bakshi, were arrested and tried in a supplementary trial by Mr. J. R. W. Bennett, Sessions Judge, Lucknow (subsequently Hon'ble Bennett, J). In the main case after protracted trial of about 8 months, Mr. Hamilton by his judgment on April 6, 1927 acquitted two persons, convicted 18 under sections 121-A and 120-B, I. P. C. and 9 of these also under section 396 I. P. C. and sentenced 3, Ramprasad Bismil, Rajendra Nath Lahiri and Raushan Singh, leaders to death and 15 to various terms of imprisonment. One person was invalidated and his trial postponed. 15 of the convicted persons appealed to Chief Court, out of whom one did not press his appeal. Government applied for enhancement of sentences of 6 out of 15, who were given lesser sentences. In the Supplementary trial Mr. Bennett by his judgment convicted both the accused and sentenced Ashfaqullah to death and Sachindra Nath Bakshi to transportation for life. Ashfaqullah filed appeal, but Sachindra Nath Bakshi did not. The two appeals and reference for confirmation and application for enhancement were heard contemporaneously one after the other. Government took keen interest and engaged the eminent lawyer Pt. Jagat Narain, to conduct the prosecution in the trial court and in appeal in the main case, Sri C. B. Gupta (recently Chief Minister of U. P.) and Sri H. N. Misra, took interest throughout in the case, and appeared for undefended accused. In the Chief Court Sri B. C. Chatterji distinguished Barrister of Calcutta High Court appeared for Roshan Singh with Dr. J. N. Misra, Mr. John Jackson for Prem Kishan, Sri L. S. Misra, was appointed to appear for Ram Kishan, Mr. H. C. Dutt with C. B. Gupta for Rajendra Nath Lahiri and other counsel for other accused. The appeal was heard by a Bench

consisting of Sir Louis Stuart, C. J. and Raza, J., who by their lengthy judgment dated August 11, 1927 upheld the findings about conspiracy and dacoities in both the cases, confirmed the sentences of death of 4 persons, enhanced the sentences of Jogesh Chandra Chatterji (now an M. P.), Suresh Chandra Bhattacharji, Vishun Saran Dublis, Govind Charan Kar and Pranavesh Kumar Chatterji. Some of the accused after their release, became prominent citizens of free India.

(2) *Satyagraha and Non-co-operation Case*

Oudh Bar Association, Lucknow in re-K. Emp. versus Mohan Lal Saxena, C. B. Gupta and others (1930) 7 O.W.N. 895.

In this case, Sri C. B. Gupta, Mohan Lal Saxena, Dr. Lakshmi Sahai, Harish Chandra Bajpai, Jai Dayal Awasthi, Shyam Sunder Nigam, Imtiaz Ahmad, Asharfi and Shyam Sunder Qaisar, all prominent citizens of Lucknow were prosecuted under section 117, I. P. C. read with section 9 of the Indian Salt Act for mass incitement to break the law relating to restriction for manufacture of salt. The accused were members of the Congress and carried out agitation against Salt Act initiated by Mahatma Gandhi. They were convicted and sentenced to 18 months' R. I. each by a Magistrate Ist Class, Lucknow on April 14, 1930. In accordance with their principles none of these 9 persons either defended themselves before the Magistrate nor filed any appeal or revision against their conviction and sentences. Messrs. C. B. Gupta and Mohan Lal Saxena were members of the Oudh Bar Association. So the Oudh Bar Association "in the discharge of their duty.....to watch and protect the privilege and liberty of its members" filed an application under section 439, Cr. P. C. for revision of the order of conviction and sentences through its President Mr. St. George Jackson assisted by Mr. R. F. Bahadurji and others on the grounds that conviction under section 117, I. P. C. is illegal and there was no evidence

to prove the offence under section 9 of the Salt Act. H. K. Ghose, Government Advocate opposed the revision application on the grounds *inter alia* (a) that Oudh Bar Association had no *locus standi*, (b) the application being barred by section 439 (5), Cr. P. C. as the convicted persons did not appeal and (c) conviction under section 117, I. P. C. is legal. The revision was heard by a Bench consisting of Hon'ble Sir Wazir Hasan, C. J. and Pullan, J. who in a very erudite judgment overruled the objections of the Government Advocate and held that the conviction under section 117 I. P. C. is illegal and set aside the conviction of all the 8 persons even though 6 of them did not apply, but upheld the conviction under section 9 (e) of the Indian Salt Act and reduced their sentence to 6 months' R. I.

(3) *Bilasia Murder Case*

State versus B. B. Singh and others.

L. R. 73 I. A. p. 1 : 1964 O.W.N. 71—B. B. Singh versus K. Emp.

This case created the greatest sensation of the century throughout India as Mr. B. B. Singh a highly placed member of the Indian Civil Service was charged under section 302 I. P. C., of murder of a pretty young woman named Bilasia, who came with his wife, as a maid servant (Bandi) according to the custom in the family and was living in his house in Lucknow, by giving her a merciless beating on May 26, 1943 at about 7.30 p.m. when on his return from office in U. P. Secretariat, it was reported to him that she was found in a compromising position with his bearer Samuel and he flew into a fit of rage and gave her the beating which caused her death ; and under section 201 I. P. C. for taking her corpse after midnight when he found after his return from a dinner where he went after the beating that she was dead by putting the corpse in the boot of his car driven by his chauffeur to a village Ram Garh Gularia in Sitapur District, 60 miles from Lucknow where Bhanwar Singh his wife's sister's husband lived and dis-

posing of the corpse by dismembering it and scattering the bones in the jungle with the help of Bhanwar Singh and his servant and 2 pasis who were also charged under section 201 I. P. C. Next morning another I. C. S. officer Mr. Misra who shared the Bungalow with Mr. Singh reported the matter to Mr. Mudie, the Chief Secretary of U. P. Government, that Bilasia was given a severe beating and had disappeared. The Chief Secretary after some enquiry entrusted the investigation to 2 highly placed and experienced members of the Special Branch of Police. They took the statements of witnesses including 2 ayahs of Mr. Singh who stated about beating and chauffeur Mahabir who deposed about midnight journey in the car to Bhanwar Singh's village. They visited the house of Bhanwar Singh but did not find Bilasia and with the help of villagers recovered some bones which were later assembled and proved by an expert to be those of Bilasia. As the investigating officers apprehended that a good deal of pressure would be placed on witnesses who were menials and dependants of the accused, they got their statements recorded under section 164. Subsequent events justified their action as they all resiled from their statements and Mahabir was produced with great difficulty, as he played a game of hide and seek. Mr. Singh admitted a slight beating and a blow on the back when she tried to run away as he was very angry and as she was guilty of similar conduct previously, he insisted on his wife getting rid of her and when he found after his return home at midnight after dinner in which he took a few drinks that Bilasia was still in the house he was very much annoyed and insisted on himself taking her to the house of Bhanwar Singh where Bilasia's cousin Basanti was a Bandi, and took her in the car with his wife, there was a puncture in the car in the way, so he left Mahabir to repair the puncture and went in a passing bullock cart to Bhanwar Singh's house with his wife and Bilasia and after leaving them there he returned to the place of puncture and was driven back to Lucknow. It was suggested on behalf of Mr. Singh that Bilasia disappeared from the house of Bhanwar

Singh when she went to attend the call of nature in the jungle. The case was tried by the Sessions Judge of Lucknow (a very senior member of I. C. S.). Mr. Hoon leading Barrister of Kanpur prosecuted and Dr. K. N. Katju assisted by other senior lawyers defended. Case under section 302 I. P. C. was triable by the judge with assessors but the case under section 201 I. P. C. with a jury, an anomalous provision of law. After protracted trial the jury found the accused not fully guilty under section 201 I. P. C. The same gentlemen acted as assessors. The learned Judge did not agree with the verdict of the jury and made a reference to the Chief Court under section 307 Cr. P. C. On the charge relating to the death of Bilasia, the learned Judge found Mr. Singh guilty under section 304 I. P. C. para 2, and sentenced him to 6 years' R. I. by his order of January 10, 1944. Mr. Singh filed an appeal against his conviction and sentence. The appeal and reference under section 307 Cr. P. C. were heard by a Bench consisting of Hon. Thomas, C. J. and Gulam Hasan, J. The protracted arguments lasting over two weeks, were reported at length in all the papers in India. A galaxy of eminent lawyers led by Rt. Hon'ble Sir Tej Bahadur Sapru and Dr. K. N. Katju both of whom addressed the court assisted by Mr. R. F. Bahadurji and other lawyers, two of them later became judges of the High Court, represented Mr. Singh, Bhanwar Singh and others were represented by Pt. Shridhar Misra. Mr. H. K. Ghose, Government Advocate appeared for the State. The Hon'ble Judges differed from the trial court in their view of the evidence and held that the jury's verdict was not perverse and rejected the reference under section 307 Cr. P. C. with respect to offence under section 201 I. P. C. and acquitted the accused. They maintained the conviction of Mr. Singh under section 304 I. P. C. but reduced the sentence to the period already undergone, a leniency. Mr. Singh filed the appeal to the Privy Council and their lordships set aside the conviction, as their lordship held that statements under section 164 Cr. P. C. cannot be used as substantive evidence and though the evidence and admitted facts.

including false reasons given by Mr. Singh for midnight motor journey created a suspicion against him, it could not be the basis of conviction.

This case is a tragedy and illustrates the difficulties of the prosecution to prove beyond doubt the guilt of an affluent accused backed by powerful influences. It may be noted Mr. Singh was later reinstated by the Government after the judgment of Privy Council and was posted as Labour Commissioner at Kanpur where he committed suicide.

(4) *State versus Sri Hari Das Mundhra*

The most notorious case which created great sensation all over India and abroad in the years 1958 and 1959 was the trial of a Marwari adventurer named Hari Das Mundhra of Calcutta who secured shares and control in various companies through speculation and manipulations in the share market Calcutta and was supposed to have become a multi-millionaire, but met his Waterloo in Lucknow, in a case of cheating and forgery.

The brief facts of the case in which Mundhra was convicted in Lucknow are as follows :

The British India Corporation is a huge business combine of several industrial companies, which were originally financed and managed mainly by Europeans, but latterly Indian businessmen acquired shares and shared in the management. Kanpur Cotton Mills was one of constituent business concerns of the British India Corporation. In 1957 there was a financial crisis in the B. I. C. It was, therefore, proposed to relieve the crisis by selling cloth lying unsold in Kanpur Cotton Mills partly for cash and partly for credit. Hari Das Mundhra, who managed to acquire a large number of shares and got himself elected as Chairman of the Board of Directors, exploited the situation. He dishonestly represented to Shri W. H. J. Christie, the Managing Director of the B. I. C., that one Manik Chand Bagri of Calcutta was willing to purchase cloth worth Rs.7 lakhs on payment of 3½

lakhs in cash and furnishing security for the balance. In fact, Sri Hari Das Mundhra gave a letter purporting to be on behalf of Sri Manik Chand Bagri agreeing to purchase the cloth on the above terms and he also deposited 95 shares of a firm Richardson and Cruddas Co., and 86 transfer deeds in lieu of security for the balance of the price amounting to Rs. 3½ lakhs. Believing that the shares and the transfer deeds were genuine, Sri Christie accepted the proposal and cloth worth Rs. 7 lakhs was sold from the Kanpur Cotton Mills in the name of Sri Bagri. Sri Mundhra managed to dishonestly appropriate the entire cloth worth Rs. 7 lakhs to himself. Subsequently it turned out that the letter which purported to bear the signature of Sri Bagri was forged and the shares and the transfer deeds were also not genuine. The shares were in fact forged duplicate copies of the original shares which were already pledged with a Bank at Calcutta.

When facts became known, the case was entrusted for investigation to S. P. E. After thorough investigation the S. P. E., Lucknow submitted a charge-sheet against Mundhra in court of Sri Maharaj Singh, Additional District Magistrate (Judicial), Lucknow for inquiry before commitment to Sessions. Before the Committing Magistrate various attempts were made, by filing bail applications and raising ingenious pleas about jurisdiction of the Lucknow Court with the object of delaying the proceedings so that Sri Christie, the key witness in the case, who was about to retire and leave India might not be available to give evidence. Astute lawyer like the late Sri G. G. Chatterji, a leading criminal practitioner of Lucknow, was engaged before the Committing Magistrate. The late Sri P. R. Das an ex-Judge of Patna and leading lawyer of all-India repute was engaged by Mundhra for his bail application. However, all these attempts failed and Mundhra was ultimately committed to Sessions for trial on charges under sections 420, 467/471 I. P. C. Sri R. A. Misra (now Hon'ble Misra, J.) an eminent Advocate, who successfully conducted the prosecution of Tahsildar Singh, son of the notorious Man Singh in Meerut

was appointed special counsel for the S. P. E. to conduct the prosecution of Mundhra and he appeared before the Committing Magistrate and Sessions. The Sessions Trial was held before Sri B. B. Misra, Additional Sessions Judge, Lucknow (now Registrar of the Allahabad High Court). The trial was protracted. Sri B. C. Sen, a former State Counsel of the Government of Bengal assisted by Sri Babu Ram Gir defended the accused Mundhra. Sri R. A. Misra conducted the prosecution and argued the case, but before the conclusion of the case he was raised to the Bench of the Allahabad High Court. Sri B. C. Sen continued his argument.

The learned Judge (Sri B. B. Misra), found the accused Mundhra guilty of all the charges and convicted him and sentenced him under section 420 I. P. C. to undergo R. I. for 4 years and pay a fine of Rs.2 lakhs in default to undergo further S. I. for 1 year and under section 467 read with section 471 sentenced him to undergo R. I. for six years, the sentences to run concurrently. Hari Das Mundhra filed an appeal against his conviction and sentence in the Lucknow Bench of the Allahabad High Court. The appeal was heard by Hon'ble Jagdish Sahai, J., in the Lucknow Bench, Lucknow. The appeal was argued by Sri N. C. Chatterji an ex-Judge of the Calcutta High Court and seniormost Advocate of the Supreme Court assisted by Sri B. N. Mulla and Sri Babu Ram Gir appeared for Mundhra in appeal in the High Court. The Hon'ble Judge upheld the conviction and maintained the sentence under section 420 I. P. C. but reduced the substantive sentence of imprisonment under sections 467/471 I. P. C. to 4 years' R. I. to run concurrently with the sentence of imprisonment under section 420 I. P. C.

Mundhra later applied for a certificate of fitness to appeal to the Supreme Court in the High Court and also for special leave before the Supreme Court but failed.

There were several other cases against Mundhra in Kanpur and Calcutta of which some are still pending in Calcutta courts.

BAR

Oudh had a galaxy of eminent lawyers ever since the establishment of the Courts of Judicial Commissioner and Financial Commissioner in 1856. In the earliest days when there were not many law graduates, permission was given by the Judicial Commissioner to applicants after some test to practise law. In those days leading legal practitioners were Europeans, though there was no paucity of Indian practitioners. Before 1926, there were 3 categories of lawyers, Advocates, Vakils and Pleaders. Barristers were enrolled as Advocates of the Allahabad High Court, Vakils were also enrolled in the said Court from amongst Pleaders. Some eminent Vakils were made advocates by the Court in recognition of their merit. Names and short accounts of the prominent members of the Bar will be given below. However, Bar did not have any organised place until the turn of the century. After the construction of new court-building, the Oudh Bar Association was allotted two rooms for its Library and use by lawyers practising in the Court of Judicial Commissioner. About the same time the Bar Association was organised without any distinction of race, or category of lawyers. Mr. St. George Jackson, Barrister-at-law was the first Secretary. The second Secretary was Shri Basudeo Lal a highly respected Vakil. In 1925, the Bar Association was reorganised with Mr. St. George Jackson as first President and Pt. Gokaran Nath Misra (afterwards Hon'ble Mr. Justice Misra), as Secretary. The Oudh Bar Association is a registered body under Act XX of 1860, and has at present 160 members including 3 ladies, an Ex-Chief Justice, an Ex-Ambassador and 2 Ex-Ministers of Government.

Ever since the door was opened for the elevation of legal practitioners to the Bench more than a score of members of the Oudh Bar occupied the position of Judges of the High Courts including Judicial Commissioner's Court. Their names are given below, though some of them have been named earlier :

(a) *Judicial Commissioner's Court, Chief Court and High Court, Allahabad.*

1. C. T. Spankie, Barrister-at-law (1882-C).
2. Sir Edward Chamier (1898-C), Barrister-at-law.
3. Sir Mohammad Rafique, Barrister-at-law (1911).
4. Sir Wazir Hasan (1921—1934), Advocate.
5. Pt. Gokaran Nath Misra, Advocate (1925—1929).
6. Sir Bisheshar Nath Srivastava, Advocate.
7. Sir George Thomas, Barrister-at-law.
8. Mr. Rachhpal Singh, Barrister-at-law, also of Allahabad High Court and later Kashmir High Court.
9. Mr. Ghulam Hasan, Advocate, also of Allahabad High Court, later Judge of the Supreme Court of India.
10. Mr. P. K. Kaul, Vakild promoted from P.C.S. and later Judge of High Court and subsequently Chief Justice of Madhya Pradesh, High Court.
11. Mr. Radha Krishna Srivastava, Advocate.
12. Mr. L. S. Misra, Barrister-at-law, Chief Court and later High Court and subsequently Chief Justice of Hyderabad High Court.
13. Mr. M. H. Qidwai, Barrister-at-law, also of Allahabad High Court.
14. Mr. H. G. Walford, Barrister-at-law.

(b) *High Court of Allahabad.*

15. Mr. Tej Narain Mulla, Vakild (later in Judicial Service).
16. Chaudhari Niamat Ullah, Advocate, officiated as Chief Justice.
17. Mr. A. N. Mulla, Advocate.
18. Mr. Nasirullah Beg (formerly Government Advocate at Lucknow and now the Chief Justice of the Allahabad High Court).
19. Mr. Ram Asrey Misra, Advocate.
20. Mr. Uma Shanker Srivastava.

(c) *Other High Courts.*

21. Mirza Samiulla Beg, Chief Justice, Hyderabad High Court and later President of H. E. H. Nizam's Privy Council.

22. Dr. Naziruddin, LL.D., Barrister-at-law, Judge of Hyderabad High Court.

SOME DISTINGUISHED MEMBERS OF THE OUDH BAR

1. Mr. Jackson, an Englishman came out to India before the Mutiny. After the Mutiny when the Court of Judicial Commissioner was established, he applied for permission to practise law, which was easily granted in those unsettled times. Though he had no previous training he acquired remarkable command of law and appeared in many important cases including Taluqa cases (e.g. S. C. 222, first Singha Chanda Case). It is said that he was responsible for amendment of the Treasure Trove Act for when he was reconstructing his old residence in Qaiserbagh he recovered some money from a demolished wall of the house and refused to hand it over to Government under the Treasure Trove Act, as it was not "embedded in the bowels of earth". He fought and won the case against Government. He amassed a huge fortune and built a palatial building for his residence which still stands on the south of Wingfield Park.

2. Mr. J. G. W. Sykes, LL.B., Barrister-at-law.—He was contemporary of old Mr. Jackson. Though he died fairly young he has left his permanent imprint on Oudh laws relating to land tenures by his masterly and erudite work "Compendium of law specially relating to Taluqdars of Oudh", which has been referred to and used in many reported cases even by the Privy Council, and Federal Court of India (e.g. in Tenancy Act case).

3. Mr. J. W. Arathoon, Barrister-at-law.—Armenian by race, practised in the Court of Judicial Commissioner and had an extensive practice in cases of importance. He later went to England and set up practice in

the Privy Council, where he appeared in almost all the cases from Oudh for one side or the other, as will appear from the law reports, Indian appeals. He took "silk" and became a K. C.

4. Mr. Syed Mahmood—He was the son of Sir Syed Ahmad, the founder of the Aligarh Anglo Oriental College which has now become a University. He went to England with his father at an early age. He joined Lincoln's Inn, London, and was called to the Bar by the said Inn on the 30th of April, 1872. After a few years' practice he entered Judicial Service and was for some time a District and Sessions Judge at Rae Bareilly. He was appointed an officiating Judge of the Allahabad High Court first in 1883 and again in 1885 and he became a permanent Judge of the High Court in the year 1887, and as such he was the first Indian to be appointed a Judge of the Allahabad High Court. He retired early after six years on the Bench in 1893. He was a great jurist and during the short term of his office he left judgments which are classic, full of erudition and research. His interpretations of law in cases decided by him, both civil and criminal, are masterpieces. After his retirement from the Bench he came to Lucknow and settled down to practise in the court of the Judicial Commissioner of Oudh and appeared in many important cases in the said Court. He had a large consultation practice. People from all over Northern India used to come to him for consultation and opinion in cases involving intricate questions of law and fact. After some time in Lucknow, he went to Sitapur for reasons of health and for comparative quietness. He was a scholar in English, Persian, Arabic and Sanskrit. He was a Fellow of the Calcutta and Allahabad Universities—He died at an early age.

5. Mr. F. G. D. Lincoln, Barrister. He had his connection in Oudh. His father's name is remembered in connection with survey and Settlement in Oudh after the Mutiny. He was called to the Bar by the Middle Temple on 7th May, 1879, was enrolled as advocate in Allahabad but set up his practice in Lucknow. He gave up his practice about 1916-1917 as he

became interested in business. He was the owner of two leading hotels—Carlton in Lucknow and Savoy in Mussoorie.

6. Mr. L. Degruyther, K.C., Barrister-at-law, the most distinguished member of the Oudh Bar. He was called to the Bar on 17th June, 1885 by the Middle Temple, London. He returned to Lucknow where he was probably born, and set up his practice in the Court of the Judicial Commissioner. He went to England and set up practice in the Privy Council and for nearly 4 decades, appeared in almost all the cases from Oudh and numerous cases from all over India and became a legendary personality. He took 'silk' and became a K. C. His sudden death considerably disturbed the cause list of the Privy Council. He was greatly mourned in England and India. In his early days of practice in England he was Reader of Hindu and Mahomedan Law in the Inns of Court. He was a Master (Bencher) of the Middle Temple.

7. Mr. S. Nabiullah, Barrister-at-law, was called to the Bar by the Lincoln's Inn on 17th June, 1885. He took part in civic affairs and was the first non-official Chairman of the Lucknow Municipality.

8. Sir Mohammad Rafiq, Barrister-at-law, was called to the Bar by the Middle Temple, London on 26th January, 1886 and was enrolled in the High Court at Allahabad as an Advocate but was a member of the Oudh Bar and practised in Lucknow. He later entered Judicial Service and rose to the position of an Additional Judicial Commissioner of Oudh in 1911 and was appointed a Judge of the Allahabad High Court in 1912. After his retirement in 1923, he was appointed a member of the Council of the Secretary of State for India, in recognition of his judicial acumen.

9. Pt. Bishan Narain Dar, Barrister-at-law, was called to the Bar by the Middle Temple on 26th January, 1887. He rendered very useful service to the Bar by the publication of authorised reports of decisions of the Court of Judicial Commissioner in "Oudh Case" from 1898 to 1916 when he died. He took great interest in the Congress of those days and presided over the session of the Indian National Congress held in Calcutta in 1912.

10. Sir Edward Chamier, was called to the Bar by the Lincoln's Inn, London, on 17th November, 1887. He was appointed second Additional Commissioner of Oudh in 1898 and rose to be the Judicial Commissioner and then went to Allahabad High Court from where he went to Patna as the first Chief Justice of the Patna High Court. After retirement he was appointed Solicitor and Legal Adviser to the Secretary of State for India in Council, London.

11. Mr. St. George Jackson, Barrister-at-law, was called to the Bar by the Lincoln's Inn on 19th November, 1888 and joined the Bar in Lucknow. He was the first Secretary of Oudh Bar Association when it was organised in 1898 and in 1925 became its first President on reorganisation, when the body had a President. He was also the President of the Oudh Bar Council from its establishment in 1925 under the Bar Council Act until his death on 31st July, 1931. He left a very useful compilation, Oudh Privy Council decision of 259 cases from 1864—1913 in collaboration with Sir Mohammad Rafique. He was the founder editor of Oudh Law Journal with Pt. Gokarannath Misra. He was the President of Boy Scout and Girl Guide Associations, U. P.

12. Mr. John Jackson, was called to the Bar by the Lincoln's Inn, London on 17th November, 1890 and joined the Oudh Bar. He was a successful lawyer and was engaged as special counsel in many cases by the Government and Court of Wards, both in Lucknow and outside. He retired from the profession on completion of 50 years' practice, when the Bar celebrated his Golden Jubilee, as token of the respect he commanded, the first Golden Jubilee, of any member of the Oudh Bar.

13. Mr. R. G. F. Jacob, Barrister-at-law, was called to the Bar by the Middle Temple on 20th January, 1893. He died fairly young, but left his mark by publication of a commentary on the Oudh Estates Act in 1903, necessitated by the passing of Oudh Settled Estates Act in 1900. He also wrote a useful commentary of the U. P. Land Revenue Act.

14. Mr. A. P. Sen, Barrister-at-law, humanitarian, was born in Dacca now in East Pakistan and had his early education there and College Education in the Presidency College, Calcutta. After graduation he went to England and was called to the Bar by the Middle Temple on 26th January, 1895. On return to India he was enrolled in the Calcutta High Court as an Advocate and practised there as a Junior to Rt. Hon'ble S. P. Sinha (Lord Sinha). In 1902 he came to and settled down in Lucknow and in no time he acquired an extensive practice in civil, criminal and revenue cases. He was the founder Editor of the useful law Report "Oudh Weekly Notes" and was also a sponsor of "Allahabad Law Journal". He was one of the founders of the Lucknow University in which there is a Hall named after him. Lucknow Municipal Board, of which he was a prominent member, has commemorated his memory by naming a road after him. One of his juniors the late Mr. Justice Kidwai became an eminent Judge. The Oudh Bar Association has got his portrait in the Library. He left his entire assets to religious, social, charitable and educational institutions in and out of Lucknow, including 2 orphanages, one a Hindu and another a Muslim, in Lucknow.

15. Mr. R. F. Bahadurji, was called to the Bar by the Middle Temple London on 26th June, 1895. He came to Lucknow in 1901, and set up his practice. The Bar celebrated the Golden Jubilee of 50 years of his service to law. He had the unique distinction of triple crown thrust on him, viz. Presidentship of Oudh Bar Association, and Chairman of the Oudh Bar Council and Presidentship of the U. P. Lawyers' Conference. He died in August, 1951. He appeared for a batch of I. N. A. Officers tried in Red Fort, New Delhi, without receiving any fee, at the request of Pandit Jawaharlal Nehru.

16. Mr. Mumtaz Husain, Barrister-at-law, was called to the Bar by the Gray's Inn London on 1st May, 1901 and set up his practice in Lucknow. Mr. Mumtaz Husain was a philanthropic person and established an orphanage, which bears his name and which has been rendering valuable service to the orphans, teaching handicrafts and giving literary instruction.

17. Chaudhry Hyder Husain M. A. (Oxon.), Bar-at-law—He was born in Garhi Bhilwal, district Bara Banki, Oudh. His first education was in the Church Mission School, Lucknow. After Matriculation he entered the Canning College, Lucknow. Later on he went to M. A. O. College, Aligarh. Thereafter he went to England for further studies and entered St. Catherine's College, Oxford, where he took honours in Jurisprudence. He was thus a B. C. L. of Oxford. He was called to the Bar by the Hon'ble Society of Lincoln's Inn, London on June 24, 1913. On his return to India after call to the Bar he got himself enrolled in the High Court at Allahabad but he preferred to set up his practice in Lucknow. He had his first training with Mirza Sami Ullah Beg Saheb. When Mirza Sami Ullah Beg left for Hyderabad as Chief Justice of Nizam's High Court in 1918, he worked as junior to the late Mr. A. P. Sen. In the meantime he picked up a good independent practice and in time he got into a very lucrative practice which increased year after year. He appeared in many important cases under the Oudh Estates Act (Talugdari Law) both in the original side of the Chief Court and in the appellate side of the then Judicial Commissioner's Court and the Chief Court of Oudh. He was a Reader in the Faculty of Law in the Lucknow University from its inception in 1921 up to 1934. He was member of the Courts of the Lucknow and Aligarh Universities. He entered public life without neglecting his work as a legal practitioner. He was a member of the then Legislative Assembly of U. P. representing Rae Bareli Constituency from 1937 until the dissolution of the Assembly. He was a member of the Constituent Assembly for framing the Constitution of India and later became member of the Lok Sabha from 1952 to 1957. Though he went to the Legislatures with the backing of Congress, he was independent and did not allow his activities to be circumscribed by party politics. As a member of the Lok Sabha, he went to China with the Parliamentary delegation headed by the then Speaker Sri Ananta Swami Ayengar. He was selected as a member

of Parliamentary Delegation which went to Russia but he could not avail of the opportunity due to serious illness of his wife who unfortunately died shortly after. He was connected with many educational, social, cultural and political associations either as a member, office bearer or President. In fact he was connected with almost every liberal association, social, political or cultural. He was President of the school for the Blind, Lucknow. He was a very generous man and contributed liberally to charitable and educational institutions without any discrimination of caste, creed and colour. He was a founder member of the Rotary Club, Lucknow whereof he later became the President. He also became the Governor of the area wherein Lucknow is situate. As a Rotary Governor he attended the Rotary International meeting at San Francisco, U. S. A. He followed the ideal of Rotary "service above self" literally. He was a prominent member of the Avadh Bar Association, Lucknow and was its Vice-President for some time and after the death of Chowdhari Niamat Ullah in 1961 he was unanimously elected President—a position which he occupied until his death on July 24, 1966. He had a genial personality, was good friend and a good patriot. Lucknow Bar celebrated his Golden Jubilee on the completion of his fifty years' practice in the bar at a dinner attended by His Excellency the Governor Sri Bishwanath Das, the Chief Minister, U. P. and the Judges of the High Court, and many other distinguished citizens.

18. Shaikh Shahid Husain, was called to the Bar by the Middle Temple, London on 24th June, 1903. He joined the Oudh Bar and soon got into a very good practice. He was Taluqdar of Gadia. He took interest in moderate political activities and was a member of the Legislature in U. P. and Centre under the old regime.

19. Mr. Mohammad Wasim, Barrister-at-law, was called to the Bar by the Lincoln's Inn, London on 27th January, 1908. After return to India he joined the Oudh Bar and soon acquired a very lucrative practice. He was appointed Advocate General of U. P. after Dr. N. P. Asthana. After

partition of India, he migrated to Pakistan where he became Attorney General of Pakistan and went to U. N. O. as a member of Pakistan Government Delegation. He died in Pakistan.

20. Dr. Jaikarannath Misra, M.A., LL.D. (Dublin), Barrister-at-law, was called to the Bar by the Inner Temple in 1916. On return, was enrolled in the High Court at Allahabad in 1917 and worked as junior to the eminent jurist Dr. Sunder Lal and had a thorough grounding in Civil Law. In 1920 he came to his home town Lucknow and set up his practice. He died on 5th October, 1943 suddenly after arguing a very difficult criminal appeal (Ganj Moradabad Case).

21. Mr. L. S. Misra, M.A., Barrister-at-law, was born in 1895. He was called to the Bar by the Inner Temple in 1919. On return, he was enrolled in Judicial Commissioner's Court in 1920. He was appointed a Judge of the Chief Court in May, 1943 and on amalgamation of the two Courts he became a Judge of the amalgamated High Court and was a senior Judge of the Lucknow Bench, when he was appointed Chief Justice of the Hyderabad High Court. After retirement he got himself enrolled as a senior Advocate of the Supreme Court. He was a member of the Law Commission for some time.

22. Mr. M. H. Kidwai, was called to the Bar by the Middle Temple at the age of 21 and was enrolled as an Advocate of the Allahabad High Court. In 1921 he joined Oudh Bar. He was legal adviser to the British Indian Association, the organisation of the landlords in Oudh and took a prominent part in drafting the U. P. Tenancy Act, 1939. He made a special study of the Taluqdari Law and Land Tenures in U. P. He was appointed a Judge of the Chief Court in 1946 and after amalgamation, he became a Judge of the amalgamated High Court and was later a senior Judge of the Lucknow Bench. He died on the Bench, while hearing the arguments of Sir Iqbal Ahmad in a difficult criminal case.

23. Mr. H. G. Walford, Barrister-at-law, was called to the Bar by

the Middle Temple on 26th January, 1926 and joined the Oudh Bar in the Chief Court the same year. He was appointed as an additional Judge of the Chief Court in July, 1945 and worked as a Judge until the amalgamation of the Chief Court with the Allahabad High Court. He, thereafter, resumed his practice in the Bar and appeared in many important cases and the Sensational Case against some Razakars in Hyderabad. He was invalided and was taken to England where he died.

24. Munshi Kali Prasad, was one of the oldest and highly respected members of the Oudh Bar, a contemporary of old Mr. Jackson and Sykes. He had extensive practice and earned a lot of money, without amassing a fortune for himself, as he was very charitable and gave his money freely, particularly to poor students. He was the founder of the Kayastha Pathshala College, Allahabad and bequeathed all his property in trust "Kayastha Education Trust" for the benefit of the said Kayastha Pathshala and for helping poor students.

25. Hon'ble Sri Ram, was a member of the Viceroy's Legislative Council before the Government of India Act, 1915. He also worked as Government Pleader of Oudh in the Court of the Judicial Commissioner for civil, criminal and miscellaneous work for Government and Court of Wards. He died literally in harness as he expired in the court of Judicial Commissioner, in the midst of his argument. He amassed a big fortune. He was interested in the poor orphans and founded an orphanage in Lucknow named after him.

26. Babu Basudeo Lal, an extremely able and clear-headed civil lawyer, who had extensive practice in the Court of Judicial Commissioner. He was a highly respected member of the Bar and was elected Secretary of the Oudh Bar Association after Mr. St. George Jackson.

27. Mr. Mohd. Naseem, was the first Vakil to be made an advocate of the Judicial Commissioner's Court.

28. Mirza Samiullah Beg, the nonagenarian venerable old man who

has the unique satisfaction of seeing two of his sons on the Bench, Mr. Justice Nasirullah Beg and Mr. Justice Hamidullah Beg. He was one of the 4 vakils who were made Advocates by Sir Benjamin Lindsay, then Judicial Commissioner in 1914. He was highly esteemed by the Bench, Bar and the public, and would have been the first Indian Member of the Oudh Bar, who is not a Barrister to be appointed an Additional Judicial Commissioner, with future prospects. But he chose to accept the tempting offer of the Chief Justiceship of the Hyderabad (Nizam's) High Court. In Hyderabad, he later became President of H. E. H.'s Privy Council and was conferred the title of Mirza Yar Jung. Subsequently he became the Judicial Minister and then the Agent of H. E. H. the Nizam in Berar. Before he went to Hyderabad he was connected with every progressive movement in Lucknow and was General Secretary of the Reception Committee of the Session of the Indian National Congress, held in Lucknow in 1916. He was a Municipal Commissioner, Lucknow. He was also a member of the Senate, Allahabad University, and a member of the Legislature, U. P.

29. Pandit Jagat Narain—The greatest Criminal Lawyer in U. P. and one of the most prominent citizens of India, in his time. He has distinction of having two of his sons raised to the Bench (one Hon'ble Tej Narain Mulla), during his life time, the other Hon'ble A. N. Mulla, the poet, after his death. He was appointed a member of the Rowlett Commission appointed after Jallianwala Bagh Massacre and Punjab Riots. The whole of India was thrilled by his searching cross-examination of the officials, whose statements were recorded by the Commission. He was thoroughly independent and firm in his views and did not hesitate to express it, even if he was the only one in the minority. He was a prominent member of the Oudh Bar Association and sometime its Vice-President. For his distinction, the British Government conferred the title of Rai Bahadur, without consulting him and when he saw the notification in the papers, he promptly refused it. An incident in the Court in this connection is worth mentioning. On the

day the notification about the honour was published, he was appearing in the Court in a case before Sir Benjamin Lindsay, the most distinguished Judicial Commissioner, who like other Judges, had great esteem for him, and Sir Benjamin Lindsay congratulated him, which made Panditji blush and he said "Sir, I have refused it". His end came suddenly in 1938 in the midst of a game of chess, of which he was fond, in a friend's house. His death was mourned all over the country.

30. Mr. E. Manual—An Anglo-Indian Pleader in the Court of Judicial Commissioner, who had good practice in Civil and Criminal Cases and acquired a reputation for legal acumen. He was a respected member of the Oudh Bar Association. He took interest in Civic affairs and was a member of the Lucknow Municipal Board.

31. Babu Ram Chandra—A Civil Lawyer, was one of the 4 vakils who were made advocates by Sir Benjamin Lindsay, Judicial Commissioner, in 1914.

32. Pandit Gokaran Nath Misra—Who was also made an Advocate in 1914, was also a Civil Practitioner and was a sound lawyer and a good Advocate. He officiated as an Additional Judicial Commissioner in 1925 and was one of the first 4 puisne Judges of the Chief Court, established in 1925. Unfortunately he died early on 5th July, 1929, but left his mark in some reported Cases, both Civil and Criminal. He was an active member of the Bar and was its Secretary for sometime. There is a road in Lucknow named after him. He was associated with many political and social organisations. Lucknow Mahila Vidyalyaya College owes its foundation to him. He was a Congressman of the old School and was a Secretary of the Reception Committee of the Congress Session in Lucknow in 1916. He was one of the founders of the Lucknow University and was in its executive until his death.

33. Sir Wazir Hasan—One of the most brilliant Advocates and the distinguished Judge of the Oudh Court. He took his LL.B. Degree from the Allahabad University. He started practice in his home town of

Jaunpur and later went to Pratapgarh and thereafter came to Lucknow and in no time acquired a very lucrative practice. He was one of the four Vakils to be made Advocates of the Judicial Commissioner's Court in 1914. He was appointed Second Additional Judicial Commissioner in 1921, being the first Indian Member of the Oudh Bar who was not a Barrister to be raised to the Bench. He was one of the Puisne Judges of the Chief Court, after its inauguration in 1925. He became Chief Judge of the Chief Court in 1930 and retired in 1934. He was knighted in 1932 being the first Indian Member of the Oudh Bar to receive the honour for his services in the Lucknow Court. After retirement he resumed practice and appeared in some important cases. His son Syed Ali Zaheer is now a Minister of Law and Justice in U. P.

34. Sir Bisheshwar Nath Srivastava—Commenced his practice in Lucknow as a Lawyer in 1902. In 1918, he was made an advocate of the Judicial Commissioner's Court. He became a member of the Oudh Bar Council after its establishment and remained its member until he was raised to the Bench. He was also a Secretary of the Oudh Bar Association. In July 1928, he officiated as a Judge of the Chief Court and in July the following year he was appointed a permanent Judge, after the premature demise of Pt. Gokaran Nath Misra. He officiated as Chief Judge of the Chief Court first in 1934 and again in July 1936 and was made permanent in July 1937, after the retirement of Sir Carleton Moss King. He was a prominent member of the Lucknow University and was in its executive until his death. He was a member of the Lucknow Municipal Board and sometime its Chairman. He was a Chairman of the Lucknow Improvement Trust and rendered very valuable service to the City, in recognition of which Government conferred the distinction of O. B. E. on him.

35. Chaudhari Niamatullah—He set up his practice in Faizabad, where he became a leader of the Bar. In 1928 he was appointed a Judge of the Allahabad High Court, being the first member of the Oudh Bar to be directly appointed to the said Court. He acted as Chief Justice of the

Allahabad High Court before his retirement on 7th December, 1937. He was offered a Judgeship of the Privy Council, but he declined and preferred to revert to Bar in Lucknow. He was appointed a member of the Committee, appointed by the Government of India, to enquire into the conditions in N. W. F. P. and its suitability for reforms. His report was so forthright and independent that the Government did not publish it and withheld the knighthood which was usually conferred on Senior Judges of the High Court, who attained the position of the Chief Justice. The Kashmir and Banaras States appointed him a Judge of their Judicial Committees with other distinguished retired Judges. He regained his large practice in the Bar on resumption of his practice and became a leader. After the death of Mr. Bahadurji, the Oudh Bar Association unanimously elected him its President, which position he held until his death.

36. Sri Radhakrishna Srivastava had his home in Kakori, district Lucknow and was educated in Lucknow. He passed LL.B. Examination from the Allahabad University and commenced practice in Pratapgarh in 1913. He was appointed an Additional Judge of the Chief Court in 1939 and would have been made permanent but for his death within a year.

37. Mr. Ghulam Hasan, graduated in law from Aligarh University and commenced his practice in Hardoi, but after a while he shifted to Lucknow in 1920. By sustained endeavour and assiduous work he got into a flourishing practice. He was appointed an Additional Judge in 1940 of the Chief Court, after the death of Mr. Justice Radhakishan Srivastava and was later made permanent. He was elevated to the position of Chief Judge of the Chief Court in 1946, after the retirement of Sir George Thomas. After the amalgamation of the Chief Court with the High Court at Allahabad, he became automatically a Judge of the amalgamated High Court, but remained in Lucknow as Senior Judge. He retired on 2nd July, 1951. After retirement he was appointed a Judge of the Supreme Court, but died suddenly before completing the term of his office. He rendered free

service to the Lady Dufferin Fund Committee, as Legal adviser. The Knighthood of the Order of St. John was conferred on him in 1947 in recognition of his humanitarian service.

38. Rai Bahadur Saraswati Prasad, started practice as a pleader in Kheri in 1907 at an early age and made his mark in the Bar by his ability and industry. He was appointed Government Pleader shortly after he joined the Bar, a position which he occupied for over 30 years. He was appointed a member of the Special Tribunal for trial of anti-corruption cases all over India for 5 years and later became its President. After retirement from the Special Tribunal, he came and settled down in Lucknow, where he acquired a large practice, both in civil and criminal cases involving complicated questions of fact and law.

39. Chaudhari Ram Bharosey Lal—After obtaining LL.B. degree, he joined the Bar in 1911. He was a prominent member of the Oudh Bar and was its Vice-President for a number of years. He was enrolled as a senior advocate of the Supreme Court.

40. Sri K. P. Misra, M. A. (OXON), Bar-at-law—He was the elder son of the late Hon'ble Pandit Gokaran Nath Misra, temporary Additional Judicial Commissioner of Oudh and later one of the first Judges of the Chief Court of Oudh. He was born on 22nd October, 1895. He had his first education in St. Francis School, Lucknow and later in the Government Jubilee School in Lucknow. He was sent to England in 1914 and entered Merton College, Oxford, where he studied Law. At the same time he entered the Hon'ble Society of the Inner Temple, wherefrom he was called to the Bar in 1920. After return to India, he was enrolled as an Advocate in the Allahabad High Court early in 1921. He set up his practice in Lucknow under the guidance of his distinguished father and gradually picked up a very good practice first as a junior and later as a senior. He would have been elevated to the Bench but for his sudden unfortunate early death on January 25, 1949. He was a very good

speaker. He was a Reader of Law in the Lucknow University for a number of years from 1934. He took keen interest in civil affairs and was a member of the Lucknow Municipal Board for a number of years. He has a son Sri S. P. Misra practising in Lucknow.

41. Sri Data Prasad Khare—His original home was in the district of Mirzapur. He had his early education in Mirzapur and Banaras. He took his LL.B. degree from the Allahabad University and came to Lucknow in 1928, and in a few years he built up a lucrative practice, first in the Civil Courts in Lucknow and later in the High Court. In the year 1958, he was appointed Senior Standing Counsel of the Government for Lucknow Bench of the Allahabad High Court, but unfortunately sudden death due to heart failure on 29th December, 1958, at the age of 56 cut short his brilliant career.

42. Sri G. G. Chatterji—He got his early education in Jumna High School and Ewing Christian College, Allahabad, and graduated in law from the Allahabad University. He made a modest debut in practice in the City Magistrate's Court and other criminal courts. Gradually by assiduity he built up a sound practice in criminal cases, in the courts of Magistrates and Sessions and ultimately in the Chief Court of Avadh and High Court. He soon became a leader of the Avadh Bar in the Criminal side. He took keen interest in the profession and was solicitous for the welfare of the junior members of the Bar and as said by Hon'ble Beg, J. in the reference in court after his demise, he trained many lawyers. He was a Reader of Criminal Law in the Lucknow University for some years prior to his fatal accident. He was interested in education and was on the Board of Directors of the Lucknow Christian College.



Law Officers of the State in Lucknow Courts

JUDICIAL COMMISSIONER'S COURT

Government Pleaders

1. Rai Bahadur Sri Ram—An eminent lawyer, who was a member of the Viceroy's Legislative Council for a time.

2. Rai Bahadur Nagendra Nath Ghosal, who later became Government Pleader of the Chief Court after its establishment but died shortly after in May 1926.

CHIEF COURT OF OUDH

1. Sir George Hector Thomas, Barrister-at-law, was the first Government Advocate in the Chief Court and Standing Counsel of the Government and Court of Wards. He was appointed a puisne Judge of the Chief Court in 1934 and became Chief Judge in 1940 and retired in 1946. He was conferred Knighthood in December, 1940.

2. H. K. Ghose, Barrister-at-law, was appointed in May, 1926, Government Pleader of Oudh, which designation was later changed into Assistant Government Advocate and Junior Standing Counsel in the Chief Court, officiated as Government Advocate in 1930-31 and again in 1935; was appointed Government Advocate and Senior Standing Counsel in 1941 and superannuated in July, 1946. Government conferred title of Rai

Bahadur on him in 1940. He is now Senior Vice-President of the Oudh Bar Association, which celebrated the golden Jubilee of his practice on 18th December, 1960.

3. Syed Ali Mohammad, Advocate, Temporary Assistant Government Advocate from June 1930-31.

4. Rai Bahadur H. S. Gupta, Barrister-at-law, called to the Bar by Gray's Inn. He started practice in Bahraich, where he was appointed District Government Pleader and later was transferred to Lucknow as Government Pleader in the Court of District Judge, Lucknow. He was appointed Government Advocate and Standing Counsel in 1934, after Sir George Thomas. Government conferred the title of Rai Bahadur on him.

5. Mr. S. C. Das, Barrister-at-law, now Standing Counsel of the Income-tax Department in the High Court, officiated as Assistant Government Advocate from May 1936 to December 1936 and again for 3 months in 1940.

6. Mr. Nasirullah Beg, M.A., Barrister-at-law (now Hon'ble Mr. N. U. Beg, Chief Justice) was called to the Bar by the Gray's Inn, London, started practice in 1925, was appointed Assistant Government Advocate and Junior Standing Counsel in the Chief Court in 1941 and Government Advocate and Senior Standing Counsel in 1946. He was appointed a Judge of the High Court on 1st July, 1951. He was Senior Judge incharge of the Lucknow Bench for about five years and acted as Chief Justice on several occasions. On 24th September, 1966, he was appointed as permanent Chief Justice.

7. Shri P. N. Chaudhari, Advocate, was appointed Assistant Government Advocate in July 1946, and continued to work for the State upto and after amalgamation of the two Courts, working as Deputy Government Advocate, in Allahabad and later as Additional Government Advocate in Lucknow Bench.

After the amalgamation of the two Courts in 1948, the functions of the Government Advocate and Standing Counsel were separated and the cadre of Law Officers in Allahabad and Lucknow were amalgamated.

SOME OF THE JUDICIAL COMMISSIONERS OF OUDH



THE HON'BLE SIR GEORGE CAMPBELL
(1858—62)



THE HON'BLE SIR GEORGE COUPER
(1862-63 & 1867—71)

BOTTOM—Left to right

MR. W. C. CAPPER
(1870 & 1877—81)

MR. CHARLES CURRIE
(1871—1877)



MR. DR. M. S. HOWLE?

(1842—1900)



MR. J. DEAS

(1894—1900)



BOTTOM—Left to right

MR. ROSS SCOTT

(1895—1907)

MR. L. C. EVANS

(1906—11)



■

SOME OF THE JUDGES OF THE CHIEF COURT OF OUDH

■

THE HON'BLE SIR WAZIR HASAN
Judge, (1925—28)
Chief Judge, (1928—34)



THE HON'BLE MR. JUSTICE GOKHARAN
NATH MISRA



BOTTOM—Left to right

THE HON'BLE MR. JUSTICE MOHAMMAD RAZA

THE HON'BLE MR. JUSTICE NANAVUTTY





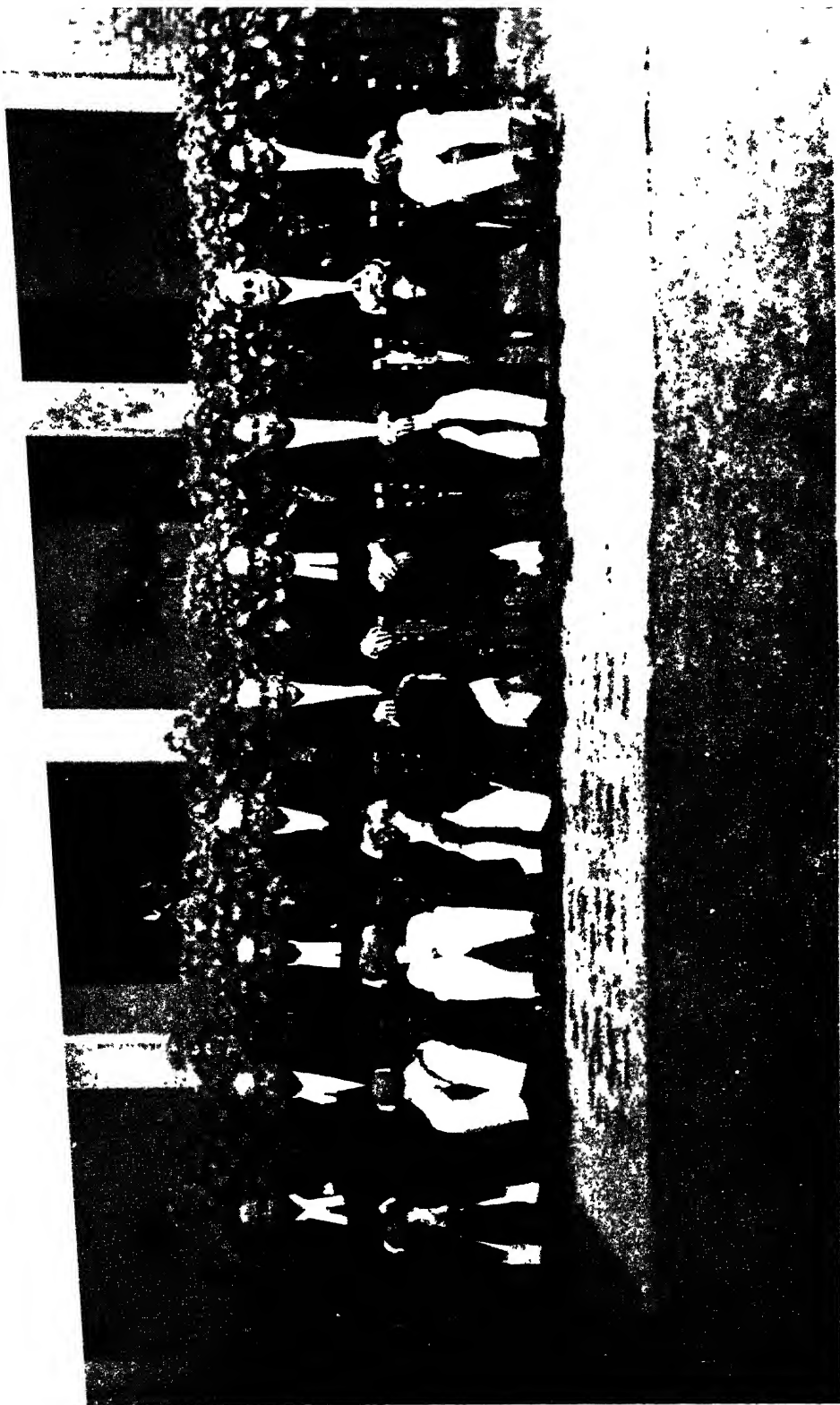
THE HON'BLE SIR B. N. SRIVASTAVA
(1936—37)



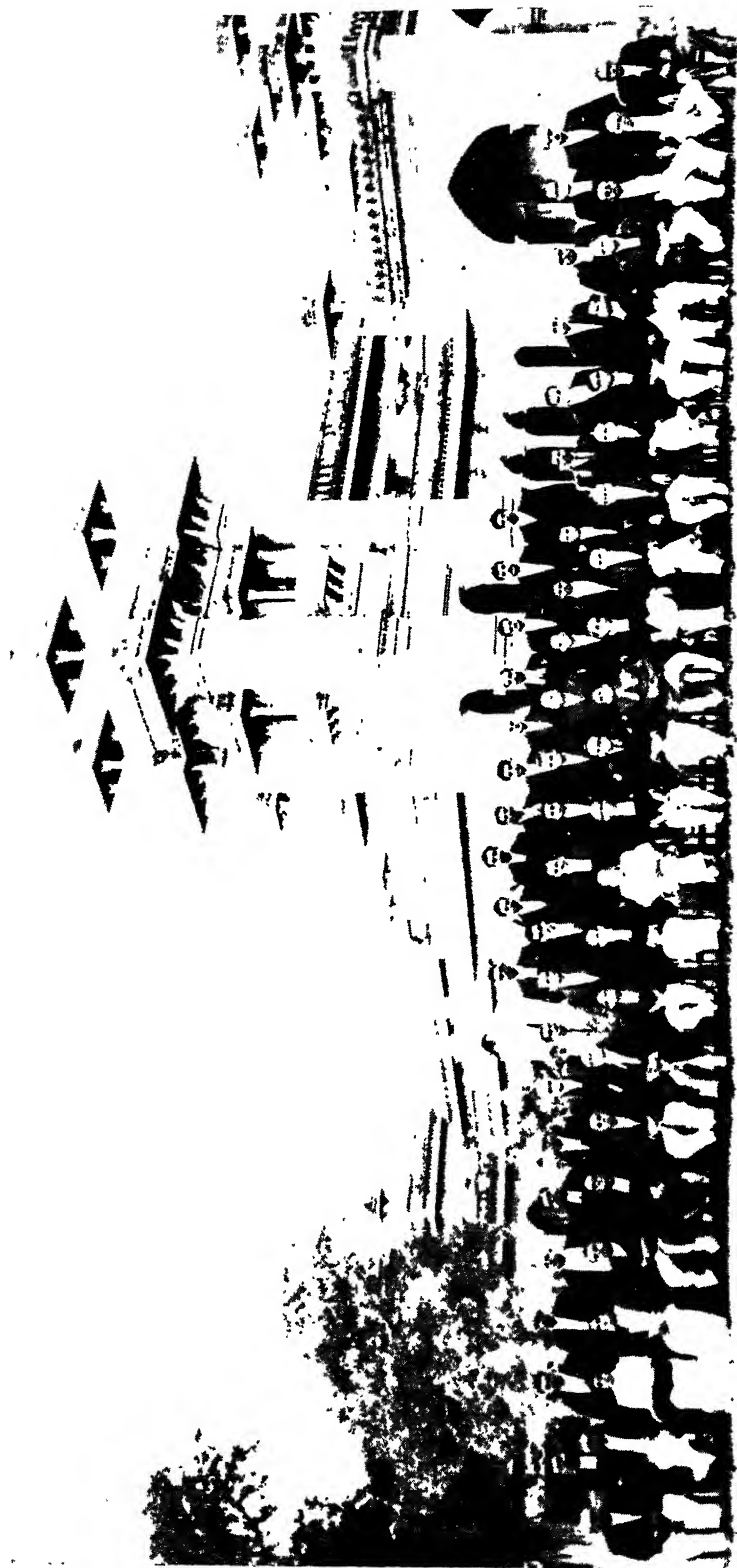
THE HON'BLE SIR GEORGE THOMAS
(1938—46)



THE HON'BLE MR. JUSTICE RADHA KRISHNA
SRIVASTAVA



MEMBERS OF GOVERNING COUNCIL , AVADII BAR ASSOCIATION, HIGH COURT, LUCKNOW BENCH, LUCKNOW



MEMBERS OF THE BAR, HIGH COURT (LUCKNOW BENCH), 1966

Advent of Women in the Profession of Law

By

MRS. RAMO DEVI GUPTA

Advocate, High Court, Allahabad

‘THE law will not suffer women to be Attorneys. . . .’, ‘they are unfit,’ were the ideas held by eminent Jurists like Lord Coke, in England about 350 years ago. “Women are generally unfitted for the duties of the legal profession Female Attorneys at law were unknown in England, and a proposition that a woman should enter the courts at Westminster Hall in that capacity or as a Barrister would have created hardly less astonishment than one that she should ascend the Bench of Bishop or be elected to a seat in the House of Commons”, [*In re, Bradwell*, (1870) 55 Ill. 535]. The three Judges of the Court of Appeal, in *Bobb versus The Law Society*, reported in (1914) 1 Ch. 286, relied on the positive prohibition of Common Law of England, founded on inveterate usage which imposed an absolute and positive prohibition against women practising the profession of law and held that women could not be allowed to be solicitors.

Sex Disqualification and Removal Act of 1919, put an end to such disability in England and women were allowed to enter all

professions, including law. A British woman called to the Bar in England, was allowed to practise in India as well, but an Indian woman or a woman who qualified in India was not allowed to practise even in her own country.

The First Regulation VII of 1793 which created, 'The pleading of causes', as distinct profession, laid down that 'Men' of character and education, well versed in Mohammedan and Hindu Law, preferably from Mohammadan College, Calcutta and Hindu College, Benaras, could be admitted by Sudder Dewani Adalat. Then came certain other enactments, and in 1879 the Legal Practitioners' Act was passed.

On 29th August, 1916, a Special Bench of Calcutta High Court, *In re, Regina Guha*, reported in (I. L. R. 44 Cal. 290), consisting of the Chief Justice and four other Judges, refused the enrolment of Miss Regina Guha as a Pleader, relying on the case of *Bobb versus The Law Society, supra*.

Late Sri Madhusudan Dass, Vakil, a great patriot and social reformer, encouraged one Miss Sudhanshubala Hazra to enter the profession of Law, but her application for enrolment as pleader was refused on 28th November, 1921 by a Full Bench of the Patna High Court, *In re, Sudhanshubala Hazra*, (I.L.R. 1 Pat. 104), consisting of Dawson Miller, Chief Justice, Mullick and Jwala Prasad, JJ., on the ground that the provisions of the Legal Practitioners' Act, 1879, did not contemplate the extension of the privilege to females.

The use of the word 'Men' in Regulation VII of 1793 although subsequently in all enactments it was replaced by the word 'persons', led to the two decisions aforesaid. Relying on the case of *Bobb versus The Law Society*, it was held in both the aforesaid cases that provisions of the General Clauses Acts of 1868 and of 1897 did not apply and words

importing the masculine gender shall not include the feminine, inasmuch as women were never there in the legal profession, either in the Mughal or British days and the Legislature never intended to bring about a change of such magnitude, so momentous and far-reaching by so furtive a process. It was further held that the words 'he', 'him', and 'his', in the subsequent enactments and the Legal Practitioners' Act, 1879, show that they invariably excluded women not by any direct prohibition but inferentially by words appropriate only to the male sex. Following Miss Regina Guha's case, it was held in Miss Hazra's case, "it was not the intention of the Legislature in the Legal Practitioners' Act to reverse the established policy or to introduce a fundamental change in long established principles of law and that to read the sections as including females was repugnant to the subject".

Justice Mullick thus observed in Miss Hazra's case, "If it were permissible to speculate upon the reasons of the legislators, all that can be hazarded is that having regard to the previous history of the relations of the sexes and the general position of women in the country, the Legislature was of opinion that it would be repugnant to ideas of decorum to permit women to join in what I may call the rough and tumble of the forensic arena".

The Allahabad High Court, in spite of the above two decisions, took the lead and changed the history by enrolling Miss Cornelia Sorabji, as the first Indian Lady, Vakil of Allahabad High Court, on 24th August, 1921. This was done by a decision of the English Committee of the Court, consisting of the Chief Justice, Sir Grimwood Mears and other member Judges present. In his judgment Mr. Justice Jwala Prasad had remarked in the case of Miss Hazra, "No doubt the recent admission of Miss Sorabji in the Allahabad High Court might create some anomaly inasmuch as ladies

enrolled as Vakils in the Allahabad High Court may claim to practise in occasional cases in the courts subordinate to this Court. . . . This again is a ground for changing the present law”.

On 28th November, 1922, Miss Hazra was granted Special Leave to Appeal by the Judicial Committee of the Privy Council against the aforesaid judgment of Patna High Court, upon depositing £400 as security for costs. This sum of £400 amounting nearly to Rs. 6,000 was beyond the means of Miss Hazra to pay. Mr. Madhusudan Dass, on 8th February, 1923, wrote to Sir William Duke, of the India Office a very forceful and warm letter requesting to forego the amount of costs. He wrote, “The question relates to permission to lady lawyers to practise in courts. If there is any country where lady practitioners are necessary, it is India . . . where pardah system is stringent and pardah ladies are often parties to the suits. They cannot instruct lawyers of other sex and consequently they become victims to the dishonesty of unprincipled Gomastas”. The Secretary of State for India very kindly consented to treat the matter as one of public interest and did not insist on the deposit of costs.

Mr. Madhusudan Dass then tried to explore the possibility of changing the law and he found in Dr. Sir Hari Singh Gaur of Nagpur, who was then a member of the Legislative Assembly, a willing champion of the cause of women. He requested Dr. Gaur to move a resolution in the Legislative Assembly to change the inequitable law against women.

On 1st February, 1922, while a resolution proposing amendment of the Legislative Assembly Electoral Rolls to remove sex disqualifications in the matter of registration on the Electoral Roll was moved by Mr. N. N. Joshi, Dr. Sir Hari Singh Gaur moved the following amendment to that resolution :

“And the Government be further pleased to remove the sex bar held to disqualify women from enrolment as legal practitioners in the courts of this country”.

Dr. Gaur exhorted emphatically, “I say, Sir, that the whole question is a question of justice and not a question of favour. Are you prepared to give justice to your female folk? Sir, if nothing else entitles women of this country to their rights and privileges, it is the great service they have rendered to you and to the nation in the immediate past. And I say, Sir, that even if it was a question of favour and not a question of primary human right, I would still ask the Assembly to remember the service of women in the past and to support their claim”.

Maulvi Abdul Kasem of Dacca supporting the amendment said, “Sir, an amendment has been moved by Dr. Gaur, asking that ladies should be permitted to appear as members of the Bar and I see no reason why this privilege should be denied to them. Ladies who pass their examinations are as competent as males to practise at the Bar . . . They will be of great assistance to Purdahnashin ladies since they could take up their cases and fight them out without the intervention of a male and a tout”.

On 15th August, 1922, a memorial on behalf of Miss Hazra was submitted by Shri Madhusudan Dass to the Viceroy with copies to Sir Frederick Whyte, President of the Legislative Assembly and its members. The enrolment of Miss Cornelia Sorabji by the Allahabad High Court was also cited as a ground in the Memorandum for getting the law amended. On 28th February, 1923 the bill was introduced in the Assembly.

Khan Abdul Rahim Khan (North-West Frontier Province) supporting the bill remarked, “Another thing which has not been brought to the notice of the Hon’ble House is that the presence of

ladies as Barristers in courts will make the Judges and the Barristers behave themselves”.

A big majority supported the bill and prevailed upon the Assembly to pass the Legal Practitioners' (Women) Act, XXIII of 1923, by which women were allowed to practise as lawyers. Since then, though not in large numbers, women have joined the profession of law in all the States of India. Women have fully justified this legislative measure, as they have not been found in any manner inferior to men in intelligence, integrity or professional competency.

It may be of some interest to note that in 1931 Sir Hari Singh Gaur sent one of his daughters, Swarup Kumari (now the wife of Mr. Justice W. Broome) to England for legal education. She attended the Inner Temple, where her father had received his legal training, and was called to the Bar. However, on her return to India she did not take to the profession of law, but chose to become a good housewife.

In 1929, Miss Shiam Kumari Nehru, now Mrs. Shiam Kumari Khan, on 26th June, 1931 late Miss Lena W. Clarke (later Mrs. L. W. Banerji) and on 22nd February, 1933 Mrs. Meenakshi Amina Faruki Begum, got themselves enrolled in Allahabad High Court and actually practised for some years. At present there are several women Advocates practising in this High Court as well as in the District Courts of U. P. One of them practising at Bareilly has been elected a member of the present U. P. Bar Council. The author of this article was elected General Secretary of the U. P. Lawyers' Conference.

Under the Constitution of India discrimination on the ground of sex is prohibited and all venues are now open to women. It is hoped that women will now be appointed in larger number both in the higher and lower judiciary. There is already one woman Judge,

viz. the Hon'ble Smt. Justice Anna Chandy, in the Kerala High Court.

Mr. Justice S. S. Dhavan, who recently led a cultural delegation to U. S. S. R., said, during a talk on his return that in Leningrad 70 per cent of the Judges of the Peoples Court are women and that 43 per cent of the Advocates of the Moscow Bar are women; to be exact 430 women Advocates out of total number of 1,000 Advocates. A woman was appointed a Judge of the Supreme Court of Tajikistan Republic at the age of about 25 years.

The women lawyers in India shall always remember with gratitude and respect the great work done to uphold their cause by pioneers like Miss Sudhansubala Hazra, Mr. Madhusudan Dass, Dr. Sir Hari Singh Gaur and last, though not the least, the High Court of Allahabad, which gave a lead in the matter.



History of Law Reporting in India

By

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IN England, the gradual development of the art of law reporting reflects the growth of the authority of precedent.¹ A court is bound by the *ratio decidendi* of every case decided by a higher court, and in the case of the House of Lords and the Court of Appeal, the position has traditionally been that they are bound by their own decisions. But now it appears that the House of Lords is not attached to the doctrine of precedent in all circumstances. It has been observed by Lord Reid in *Scruttons, Ltd. v. Midland Silicones Ltd.*,² that the House of Lords may question or limit the *ratio decidendi* of a previous decision in three classes of cases : first, where it is obscure; secondly, where the previous decision itself is out of line with other authorities or established principles; and thirdly, where it is much

¹ Harold Potter, *A Historical Introduction to English Law and its Institutions*, at p. 262 (1948). For history of law reporting in England, see *ibid.*, at pp 258—268; Philip S. James, *Introduction to English Law*, at pp. 10—16 (1962).

² (1962) 1 All ER. 1.

wider than was necessary for the decision so that it becomes a question of how far it is proper to distinguish the earlier decision.¹ In a later case, *viz.*, *Chancery Lane Safe Deposit and Offices Company, Ltd. v. Inland Revenue Commissioners*,² the opinion of Lord Reid and Lord Upjohn was that the rule of the House of Lords neither to reverse nor to depart from a previous decision of the House applied to the reasoning of the decision but did not bind the House to follow a previous case merely because it was indistinguishable on its facts.³ As regards the Court of Appeal, it does not appear that there is any departure from the traditional position.

In India, there has been no such development of the art of law reporting and the growth of the authority of precedent as in England. The method of law reporting to preserve judicial decisions and the principle of the authority of precedent have been adopted in this country from England. As in England, a court in this country is bound by the *ratio decidendi* of every case decided by a higher court; but the Supreme Court and the High Courts are not bound by their own decisions. In *Bengal Immunity Company, Ltd. v. State of Bihar*,⁴ the Supreme Court held that it can depart from a previous decision if it is convinced of its error and its baneful effect on the general interests of the public.⁵ The same is the position in the High Courts also.⁶

¹(1962) 1 All E.R. 1 at p. 12.

² (1966) 1 All E.R. 1.

³ *Ibid.* at pp. 10, 21.

⁴ A.I.R. 1955 S.C. 661.

⁵ *Ibid.* at pp. 672. See also *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845, at p. 855.

⁶ *State of Uttar Pradesh v. Firm Deo Dutt Lakhani Lal*, A.I.R. 1966, All. 73 at p. 80.

The History of law reporting in India may be divided into two parts : the first dealing with the early stages of its development (roughly a period 1813—1861), and the second with a more regular course which is said to have commenced with the establishment of Presidency High Courts in 1862.

Early Stages

In 1813 the necessity of establishing the authority of precedent in India was for the first time emphasised in the following words : ‘... it should be enacted by a Regulation that from a given period, the judgments of the court shall be considered as precedents binding upon itself and on the inferior courts in similar cases which may arise thereafter. This will have the effect of making the superior courts more cautious and of introducing something like a system for the other courts, the want of which is now very much felt.’ It was further emphasised that ‘hitherto it has not been much the custom to refer to precedent; and for ought the Judges of the court may know, the same points may have been decided over and over again and perhaps not always the same way. It is obvious that having something like a system established would tend to abridge the labours of the civil courts.’

Thus arose the need of the publication of reports of cases involving questions of native law, and also of the publication of other reports, for guidance of the courts themselves as well as the legal practitioners.

Again in 1850 one William Macpherson observed that the practice and doctrines of the civil courts must be deduced, in great measure, from an examination of the decisions at large, both those which have been especially adopted and published as precedents and

those which are issued monthly as a record of the ordinary transactions of the Sadar Courts; for all decisions practically tend to show by what principles the court is governed; and they become law, that is to say, they guide men in their private transactions and they regulate the decisions of the courts. No one can make the examination to which I have referred, without perceiving that there is a large body of living doctrine, which appears to mature itself by degrees in the minds of experienced judicial officers, but which is not to be met with in any definite form. Yet by this test the judgments of the inferior courts are necessarily tried, and no small portion of them are quashed for erroneous procedure, frequently with great severity of comment upon the part of the highest tribunal.

In this context we refer to the collections of reports made during 1813—1861:

Reports of Cases decided by the Crown's Courts¹

The published collections of reports of Indian Decisions were not many, but they already existed in sufficient numbers to be of the greatest practical utility, and additions were made to them day by day.

The decisions of the Privy Council on appeal from India were originally inserted in the reports of Knapp and Moore. Later on, they were published separately under the title 'Indian Cases', and appeared at intervals. There was also a valuable collection

¹ The Mayor's Courts, established in the Presidency Towns under the Crown's Charter of 1726, were the first Crown's Courts. They were subsequently replaced by the Supreme Courts established in Calcutta, Madras and Bombay under the Parliamentary Acts of 1773, 1800 and 1823 respectively.

of the printed cases decided in appeals, and prepared by Lawford, but it was never published.

W. H. Morley included in the Appendix to his Digest of Indian Cases, a valuable series of notes of cases of the Calcutta Supreme Court prepared by Judge Sir Edward Hyde East. The notes contained many important decisions on native law and questions relating to the jurisdiction of the Court.

Reports of cases were given by way of illustration by Sir Francis Macnaghten in his 'Considerations on the Hindu Law', as current in Bengal, published in 1824. These Reports, from the nature of the work from which they were extracted, were, of course, confined to cases involving questions of Hindu Law.

Notes of cases were found in Longueville Clarke's editions of the Rules and Orders of the Calcutta Supreme Court, published in 1829; of the additional Rules and Orders which appeared in the same year; and of the Rules and Orders for 1831-32, published in 1834. These notes of cases were very valuable, many of those in the two latter collections containing the judgments in full and relating to points of native law of great interest.

Reports of cases decided by the Calcutta Supreme Court were published by Bignell in 1831. Only a single number of these Reports appeared. The cases were fully and ably reported.

Notes of cases were inserted by Smoult in his Collection of Orders on the Plea Side of the Calcutta Supreme Court from 1774 to 1813, published in 1834. These notes were succinct but highly useful and comprised decisions, principally on points of practice, from 1774 to 1798.

In 1841 Morton published a Collection of Decisions of the Calcutta Supreme Court. It was principally compiled from the

manuscript notes of R. Chambers, C. J., Hyde, J., and other Judges of the Court, and the cases related almost exclusively to questions altogether peculiar to India. It was a work of great utility and authority.

Fulton published a single volume of reports in 1845. This volume comprised cases decided in the Calcutta Supreme Court between 1842 and 1844.

The example set by Morton and Fulton by publishing the decisions of the Calcutta Supreme Court was followed by the other barristers of the Court. In 1850 Montrieu published a volume of Reports comprising decisions delivered in 1846. In 1851 Taylor continued these Reports comprising decisions given in 1848. Taylor in collaboration with Bell published the subsequent cases.

The only collection of the decisions of the Madras Supreme Court was published by Sir T. Strange, C. J. This work appeared in 1816 and comprised three volumes. The cases were clearly set forth and the judgments frequently given in entirety ; but from the paucity of the materials placed at the disposition of the Judges at that time, the decisions of the Court, relating to questions of native law, must be taken with some reservation.

A valuable collection of the decisions of the Bombay Supreme Court was given by Morley in the Appendix to his Digest of Indian Cases. These decisions were made available by Sir Erskine Perry, C. J. They gained additional authority from the fact of the manuscript having been carefully revised and corrected by Sir Perry himself. In 1853 Sir Perry published a collection of cases 'illustrative of Oriental life, and the application of English law to India', decided by the Supreme Court.

Reports of Cases decided by the Company's Courts¹

The first printed Reports of cases decided by the Courts of the Company were published by Sir William Hay Macnaghten, while he was Registrar of the Calcutta Sadar Diwani Adalat. These were the Reports of the cases decided by this Sadar Adalat. A second edition of the first two volumes appeared in 1827, and the Reports were subsequently continued in the same form. Those contained in the first volume were chiefly prepared by Dorin who later became the Judge of the Court. The notes appended to the cases in this volume were entitled to weight as having been written or approved by the Judges who had decided these cases ; and those explanatory of intricate points of Hindu Law were most especially valuable as coming from the pen of Henry Colebrooke. The second, third and part of fourth volumes were also published by Sir William Macnaghten. The later cases in the fourth volume were selected and prepared by C. Udney, his successor in the Office of Registrar. The cases contained in the fifth volume were reported by Justice Sutherland. The cases given in the sixth and seventh volumes had no reporter's name affixed, but they were approved by the Court and were believed to have been prepared by the Registrars.

Since the end of 1844, these Reports, which were later called 'Select Reports', published 'as approved by the Court', were 'but a reprint, accompanied by notes, of such of the decisions, published monthly, as containing constructions of law, or being illustrative of points of practice, are adapted to serve as precedents to the lower courts'. It was subsequently determined by a resolution of the Court, dated April 27, 1849, that the publication of the Select

¹ The courts established in India by the East India Company.

Cases should be discontinued. The mere reprint of a selection from the monthly publications of decisions was perhaps unnecessary, as the object of pointing out the 'leading cases', might have been more readily accomplished by the edition of a tabular reference and explanatory notes, sanctioned by the Court, and appended to the monthly issue. This was, however, not done, and it could not be denied that much inconvenience had arisen from the discontinuance of the Select Reports.

Reports of summary cases decided by the Sadar Diwani Adalat at Calcutta from 1841 to 1846 were appended to seventh volume of the above-mentioned collection. In 1845 a selection of reports of summary cases was published separately, containing selected decisions from 1834 to 1841, the former year being the period in which the Summary and Miscellaneous Department of the Business of the Court was first entrusted to one Judge. These were continued to the end of 1848, and were published as the first volume of Reports of Summary Cases. In the resolution, as mentioned above, it was stated, in respect of the Reports of Summary Cases, that "the Court are of opinion that their publication may go on, not as 'approved by the Court', but with the sanction only of the Judge incharge of the Miscellaneous Department, whose decisions they are, and who will note such of them as he may think useful for publication".

An Index to all the seven volumes of the Select Reports of Regular Cases and to the first volume of the Select Reports of Summary Cases was published in 1849.

A reprint of the Reports of Summary Cases decided by the Calcutta Sadar Diwani Adalat comprising reports from 1834 to 1852 was prepared by Carrau and published at Calcutta in 1853. This work is said to have been published by authority, and under the supervision of the Judges.

Another edition of the summary decisions of the Calcutta Sadar Diwani Adalat from 1834 to 1855, alphabetically arranged, was published at Calcutta in the latter year.

Reports of cases, chiefly in summary appeals, decided by the Calcutta Sadar Diwani Adalat, were published by Sevestre, a pleader of the Court. First volume of this collection comprised three parts and was completed in 1842. These Reports were exceedingly useful and were further in progress.

The decisions of the Calcutta Sadar Diwani Adalat, recorded in English, in conformity to Act XII of 1843, then began to be published monthly. This collection was commenced in 1845 by order of the Governor-General. The decisions of each year formed a separate volume. In the volume for 1850, marginal abstracts of the decisions reported were for the first time added.

The former Reports of cases decided by the Sadar Courts principally related to constructions of the written law and touched only occasionally points of procedure and practice, so that the publication of the decisions recorded in English, including cases of every description, may be said to have opened an entirely new field for the investigation of the student.

The monthly collections, referred to above, were of great value, and as they were published simultaneously at Calcutta, Agra and Madras, any one could form a comparison between the practice of the several courts of last resort, which could not fail to be of the utmost utility in furthering the attainment of uniformity of procedure through the courts in India. Unfortunately, however, the decision in these collections were not easily referred to; the Indices appended were insufficient and the mode in which the cases themselves were reported was often such as to render it difficult to seize their full bearing. It is also regretted that the plan of adding marginal notes

to these collections had been long delayed and was not even generally followed. No person, who did not examine them attentively, could form an idea of the labour required to master the contents of a single volume. The propriety of the object of their publication, viz., 'to give all possible publicity to the decisions of the Sadar Courts', was unquestionable, but it may be doubted whether the requisite publicity might not have been better attained by adopting a somewhat modified form. There was frequent and needless repetition of similar cases and decisions. This repetition was especially conspicuous with regard to cases involving points of practice, cases constantly recurring in which precisely similar circumstances presented themselves, and the erroneous decisions of the lower courts, passed on the same points, were reversed, or the suits remanded on appeal, on identical grounds.

The decisions of the Zila Courts of the Lower Provinces, recorded in English according to the Act of 1843, were printed monthly in the same form as the preceding collections. The decisions of the Zila Courts in the North-West Provinces were also published in a similar way and form. They were commenced in 1848. The decisions of the Zila Subordinate and Assistant Courts of the Madras Presidency were also published monthly. They began with the cases decided in 1851. All these collections of cases of Zila Courts were, however, comparatively unimportant since they were never referred to in the superior Courts as precedents.

The reports of cases decided by the courts of the Company at Madras, with the exception of the monthly collections already mentioned, were few in number. A volume was published in 1843 entitled as 'Decrees in Appeal Suits determined in the Court of Sadar Adalat', Volume I, containing select decrees from 1805-1826. The cases in this collection involving questions of Hindu Law were

interesting as illustrative of the prevailing doctrines of the southern schools. These decrees were, however, obscurely reported and in some instances they contained no point of law whatever, being merely decisions for want of proof.

A collection of decrees in appeal suits decided by the Sadar Adalat at Madras from 1826 to 1847 was published at Madras in 1853.

The first collection of the decisions of the Sadar Diwani Adalat at Bombay was the well-known series of Reports by Borra-daile, formerly a Judge of the Court and the author of the translation of *Mayukha*. His work was in two folio volumes and was published at Bombay in 1825. It was full of cases on points of law peculiar to that part of India ; these cases were ably reported.

A small but useful publication appeared in 1843 entitled as Reports of Selected Cases determined in the Sadar Adalat at Bombay. The Reports contained in this little volume were prepared, with few exceptions, by the Deputy Registrars of the Court and were arranged according to the dates of decisions which were scattered over a period extending from 1820 to 1840, the latter ones having been noted by the Judges as proper subjects for publication.

In 1850, Bellasis, once Deputy Registrar of the Bombay Sadar Diwani Adalat published a small volume containing decisions of that Court from 1840 to 1848, intended as a continuation of the Reports of Selected Cases. Bellasis stated that 'the cases reported are for the most part the decisions of a full Court of three Judges, such being considered more authoritative as precedents'. A few Reports in this collection were prepared by Babington while he was the Deputy Registrar of the Sadar Court.

In 1855, Morris commenced the publication of Reports of cases decided by the Sadar Diwani Adalat at Bombay. The first

volume contained all the decisions for 1854. Each of the subsequent volumes comprised the decisions of a year.

In the branch of the criminal judicature, only a few Reports were printed. The first collection that appeared was of the sentences of the Sadar Nizamat Adalat at Calcutta. The first two volumes were prepared by Sir William Macnaghten. There was no reporter's name in the subsequent volumes.

In 1851, a monthly series of decisions of the Calcutta Nizamat Adalat was commenced.

At Madras a similar issue of Reports of criminal cases decided by the Sadar Faujdari Adalat began in the same year. Marginal abstracts were added in this series.

A valuable collection of Reports of cases decided by the Sadar Faujdari Adalat at Bombay, compiled by Bellasis and comprising decisions from 1827 to 1846, appeared in 1849. The cases recorded in this collection were selected to illustrate the application of the Bombay Criminal Code, both in questions of evidence and of punishment and also to settle doubtful points of procedure and practice.

In 1852 publication of the decisions of the Sadar Nizamat Adalat of the North-Western Provinces began. It commenced with the decisions of 1851.

In 1855 Morris published a collection of Reports of cases decided by the Sadar Faujdari Adalat of Bombay, the cases commencing with those of 1854. Two volumes were published every year, each containing the decisions of six months.

In the last, Analytical Digest of all the reported cases, prepared by W. H. Morley, may be mentioned. In 1850 he published its first two volumes, text being accompanied by copious notes referring to the original authorities and explanatory of doubtful points. The

work was received favourably and, therefore, it was further continued. In 1852 Morley published the first volume of a 'New Series' comprising the decisions of all the courts to the end of 1850.¹

Reporting after 1861

Hitherto law reporting was not regular and systematic. It was only with the establishment of the High Courts in the Presidency Towns in 1862 that regular law reporting commenced. From that time semi-official and private law reports came to be published regularly and systematically. At present there is official law reporting also.

Sir James Stephen, who was the Law Member in the Governor-General's Council, recorded a minute to the effect that law reporting should be regarded as a branch of legislation; he accepted the principle that it was hardly a less important duty of the Government to publish the law enunciated by its tribunals than to promulgate its legislation. On this subject a circular was issued to various local Governments and the High Courts. Later on Mr. Hobhouse, who succeeded Sir Stephen as the Law Member, became interested in the subject of law reporting and took initiative in the passing of the Law Reports Act in 1875 for the improvement of Law Reports. Its section 3 gave authority only to authorized reports by providing that no court would be bound to hear cited, or would receive or treat as an authority binding on it, the report of any case decided by any High court, other than a report published under the authority of the Government. After the passing of this Act, Councils of Law reporting were set up in several High Courts and Reports began to

¹ This part of the article under the heading 'Early Stages' is based on W. H.

be published under the supervision and authority of the Government.

The Act of 1875 which was an attempt at creating a partial monopoly in favour of official Reports, was strongly opposed. Sir George Campbell who was then Lieutenant-Governor of Bengal said : 'If you put into the hands of any one authority the power of deciding which of these decisions should be treated as authoritative and which are to be rejected and snuffed out, you give that authority an enormous power over the Superior Courts of the country: you make him, in fact, Judge over the Judges.' Notwithstanding this Act, unofficial reports, published in this country, were and are cited before the superior courts and relied upon by them in their judgments. In fact the Act has proved to be a dead letter. In 1927 a non-official Bill, introduced in the Central Legislature, containing provision to ban the citation of non-official Law reports, met with a strong criticism and opposition and ultimately collapsed. Recently the Law Commission also declared that monopoly of law reporting was not desirable, and suggested that the Act of 1875 should be repealed.¹

According to the information available in the 14th report of the Law Commission, the official and non-official Law reports, published in this country, are mentioned below.²

Non-Official All India Reports.

- (1) All India Reporter. (2) Criminal Law Journal.

Official Law Reports.

- (1) I. L. R., (Indian Law Reports), Allahabad. (2) I. L. R., Andhra Pradesh. (3) I. L. R., Assam. (4) I. L. R., Bombay.

¹ Morley: *The Administration of Justice in British India*, at pp. 331—346 (1858), with some changes in the language and arrangement.

² Law Commission of India, *Fourteenth Report*, at pp. 633, 634.

(5) I. L. R., Calcutta. (6) I. L. R., Cuttack. (7) Jammu & Kashmir Law Reports. (8) I. L. R., Kerala. (9) I. L. R., Madhya Pradesh (taking the place of I. L. R., Nagpur and I. L. R., Madhya Bharat). (10) I. L. R., Madras. (11) I. L. R., Mysore. (12) I. L. R., Patna. (13) I. L. R., Punjab. (14) I. L. R., Rajasthan. (15) Supreme Court Reports.

Non-Official Law Reports.

(1) Allahabad Law Journal. (2) Allahabad Weekly Reporter. (3) Andhra Law Times. (4) Andhra Weekly Reporter. (5) Bihar Law Journal. (6) Bombay Law Reporter. (7) Calcutta Law Journal. (8) Calcutta Weekly Notes. (9) Calcutta Law Times. (10) Jabalpur Law Journal (Gwalior) (previously Madhya Bharat Law Journal). (11) Jabalpur Law Journal (Jabalpur). (12) Karnatak Law Journal. (13) Kerala Law Journal. (14) Kerala Law Times. (15) Madhya Pradesh Cases. (16) Madhya Pradesh Law Journal. (17) Madras Law Journal (Civil). (18) Madras Law Journal (Criminal). (19) Madras Law Weekly. (20) Madras Weekly Notes. (21) Mysore Law Journal. (22) Nagpur Law Journal. (23) Patna Law Reports. (24) Punjab Law Reports. (25) Rajasthan Law Weekly. (26) Supreme Court Appeals. (27) Supreme Court Cases (in Hindi). (28) Supreme Court Journal.

Special Law Reports.

(1) Company Cases. (2) Company Cases Supplement. (3) Factories Journal Reports. (4) Income Tax Reports. (5) Labour Appeal Cases. (6) Labour Law Journal. (7) Sales Tax Cases.

Law Commission and Law Reporting

The Law Commission, appointed in 1955, has dealt, in detail,

with the question of Law reporting in India and has made certain valuable suggestions for improvement.¹

The Law Commission has omitted to consider the desirability of undertaking the reprinting of old Law Reports. It is submitted that in the interest of administration of justice, it is necessary that this project should be undertaken by either the Government or some private agency under the supervision of the Government.



¹ Law Commission of India, *Fourteenth Report*, at pp. 636-637, 641, 646.


² See Resolution on Revision of Law Reports, reported in the *Journal of the Indian Law Institute*, Vol. 4, at p. 631 (1962).

A Historical Retrospect of the Administration of Justice in Kumaun

BY

SRI N. D. PANT

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N 26th April, 1815, Almora was captured by the British forces, and under the treaty of Sigauli in 1816, Nepal formally ceded the territory now comprised in the Kumaun and Uttarakhand Divisions, district of Dehra Dun, and certain other areas to the East India Company. A province of Kumaun was formed consisting of the erstwhile districts of Almora, Garhwal and Naini Tal. Garhwal was separated from Kumaun under Act X of 1838, and another Terai district was also created. Thus the province of Kumaun included the districts of Kumaun, Garhwal and Terai. But on 13th October, 1891, Naini Tal district was formed by combining the Terai and Bhabar area, with certain hill patties which were formerly included in what was known as Kumaun district which thereafter came to be known as Almora. The three districts of Almora, Naini Tal and Garhwal constituted the Kumaun Division. On the merger of the erstwhile Tehri State in 1949, Tehri district was also added to this Division.

On the absorption of Kumaun with the rest of British India, the then Governor-General appointed one Hon'ble E. Gardner to assume the office

and title of Commissioner for Affairs of Kumaun and Agent to the Governor-General on 3rd May, 1815, and Mr. G.W. Traill as his Assistant. But as the former mostly remained busy with his military and political duties in Nepal the burden of administration fell on his Assistant, Mr. Traill.

The administrative history of Kumaun Division, in the words of Whalley in his "Law of Non-Regulation Provinces" divides itself into three periods "Kumaun under Traill; Kumaun under Batten and Kumaun under Ramsay. The regime in the first period was essentially paternal, despotic and personal. It resisted the centralising tendency which the policy of the Government had developed. It was at the same time, though arbitrary a just, wise and progressive administration. Mr. Traill's administration lasted from 1815 to 1835.

"Mr. Batten ruled Kumaun during 1836—56, but the early stages of his rule were marked by an influx of codes and rules and a predominance of official supervision which gradually subsided as Mr. Batten gained influence position and experience. Thus the second period glided insensibly, into the third which nevertheless has a distinctive character of its own. In Sir Henry Ramsay's administration we see the two currents blended. The personal sway and unhampered autocracy of the first era, combining with it the orderly procedure and observance of fixed rules and principles which was the chief feature of the second."

It may be stated that in the earliest times administration of justice, civil or criminal, was hardly any problem to the British Government. From 1st of January, 1820 to 31st December, 1821 the total number of criminals confined in Jail amounted to sixty-five out of whom 4 had been convicted of murder, 3 for thefts above Rs.50 and the rest for petty thefts, assaults, defamation, forgery, etc. In the words of Traill himself in his Statistical Sketch of Kumaun, "Affrays of a serious nature are of rare occurrence and even petty assaults are most infrequent Applications to court on the subject of caste are numerous; these are invariably referred to the Pandit of the court,

whose decree delivered to the party concerned is conclusive. . . . In civil judicature the simple forms of the preceding Government have been generally retained. The petition originating the suit is required to be written on an eight-anna stamp but no institution or other fees are levied; a notice in the form of an *ittalanama* is then issued which process is served by the plaintiff and in three cases out of four produces a compromise between the parties; where ineffectual it is returned by the plaintiff into court, when the defendant is summoned. The parties then plead their cause in person and should facts be disputed on either side, evidence is called for. oaths are never administered except in particular cases and at the express desire of either parties. Suits for division of property or settlement of accounts are commonly referred to arbitrators selected by the parties. In the issue and execution of decrees, the established forms are followed, but the leniency of native creditors renders imprisonment and sales in satisfaction of decrees uncommon . . . At present only one court (Commissioner's court) exists in the province for cognizance of civil cases, and the absence of fees and simplicity of forms as therein practised joined to its frequent removal to every part of the country, have hitherto tended to prevent any inconvenience being experienced from want of mofussil courts. The gratuitous administration of justice has not been found to excite litigations" (Our Law and Finance Ministers to note !)

Untrammelled by any laws, rules and regulations Mr. Traill made his own arrangements for administration of civil and criminal justice. He was not only the head of the civic administration but the sole legislator and dispenser of civil justice. He had framed his own rules of procedure for presentation of complaints on an eight-anna stamp irrespective of the valuation of the claim on presentation of which the plaintiff was required to serve notice on the defendant himself. In seventy-five per cent cases the claims were compromised. In others the parties were first examined whereafter their witnesses, if any, were examined, but oath was generally not administered.

There were no lawyers and no one was permitted to act as an agent of the contending parties, and the maximum duration of a suit was twelve days. Incidentally it may be stated that Mr. Traill also conducted the first 'Nazarandazi' survey of Kumaun in Samvat 1880 i.e. 1818 A. D. (commonly known as "Sal assi") which still continues to form the basic document for determining village boundaries. There was no actual survey, but Mr. Traill nationally allotted land amidst the different villages by reference to natural or prominent features existing on the northern, southern, eastern and western boundaries of each village. Actual survey operations in most of the areas of Kumaun were undertaken for the first time by Mr. Beckett in 1856.

According to Walton's Gazetteer for the District of Almora first Munsif was appointed in 1829 and seven Kanungos were invested with the title and powers of Munsif, and title of Sadar Amin was conferred on Court Pandit. These officers continued to exercise powers of civil judges till 1838 when these offices were abolished and the Act X of 1838, was enforced under which the two districts of Kumaun and Garhwal each had one senior Assistant, one Sadar Amin and one Munsif under Sudder Dewani Adalat. In Civil Administration, Kumaun Province was placed under the jurisdiction of Sudder Dewani Adalat in 1838 and remained subject to its jurisdiction till 1864. The Assam Rules with certain modifications were adopted for the administration of civil and criminal justice in 1839. These rules were superseded in 1863, by a set of civil and revenue rules known as Jhansi Rules. Statutory authority was given to these rules by section 2 of the Non-Regulation Districts Act (Central Act XXIV of 1864), under section 4 of which Civil Procedure Code was also made applicable. Rules for service of processes were based on the lines laid down by Mr. Traill.

Thereafter a new set of rules under notification no. 628/VII—569-B, dated 27th June 1894, were promulgated under which the Commissioner was constituted as the High Court of Kumaun except in the cases under

Succession Act, in which he acted as a District Judge and an appeal lay to the High Court of Allahabad against his decision. The other revenue officers (e.g. Assistant Collectors) were invested with the powers to decide civil cases with varying extent of jurisdiction. The Government had however been given power under Rule 17 to make reference to the High Court of Allahabad against the decision of the Commissioner sitting as the High Court of Kumaun, and thereafter to decide the case in accordance with the opinion of the High Court. There are a number of reported cases decided by the High Court under Rule 17 of the Kumaun Rules, 1864, e.g.—

(1) 1 Allahabad Law Journal Reports, page 29—Niaz Ahmad *vs.* Abdul Hamid.

(2) 1905 Allahabad Weekly Notes, page 91—Kumia Giro *vs.* Narottam.

(3) 18 Allahabad Law Journal Reports, page 381—Nasibullah *vs.* Kunwar Anand Singh.

(4) All India Reporter, 1924, Allahabad, 318—Amlanand *vs.* Nandu.

(5) All India Reporter, 1925, Allahabad, 648—*In the matter of* Shyam Lal Sah.

(6) All India Reporter, 1929, Allahabad, 223—Gaje Singh *vs.* Uchhapia.

The Commissioner of Kumaun, however, continued to exercise the powers of a High Court until the enforcement of Notification no. 543/VII—421, dated 1st April, 1926 (published at page 57 of the Rules and Orders Relating to Kumaun) when a District Judge was appointed to exercise jurisdiction over Pilibhit, and the three districts Almora, Garhwal and Naini Tal constituting the Kumaun Division. Later on Pilibhit was separated from Kumaun judgship. The Deputy Commissioners of the three districts were invested with the powers of a subordinate judge and Assistant Collectors who were revenue officers were empowered to try civil suits up to a valuation of rupees five thousand.

The arrangement of investing revenue officers with the powers of Civil Judges and Munsifs did not work satisfactorily after 1926 when the District Judge of Kumaun became the Appellate Court in respect of civil cases decided by them. These revenue officers not very much conversant with civil laws found that their judgments were subjected to severe criticism at the hands of the District Judge. Consequently they were shy to try civil cases which had been thrust upon them by virtue of their office as Assistant Collectors. This led to an appalling state of arrears in the disposal of civil cases. Sir Iqbal Ahmad the then Chief Justice, drew the attention of the Government to this fact. In 1942 the U. P. Government agreed to post one Judicial Officer at Almora with powers of an Assistant Collector of first class, who by virtue of his office became a Civil Judge with jurisdiction to try civil suits up to a valuation of Rs.5,000.

This experiment proved very successful. Consequently in 1947 the Government appointed a number of young and promising lawyers as Revenue Officers exclusively to try and dispose off civil cases. In 1952, the High Court appointed its own Munsifs and Civil Judges under Bengal and Assam Civil Courts Act.

After the merger of the erstwhile Tehri State one more Civil and Sessions Judge was posted to Kumaun under the District and Sessions Judge of Kumaun. On account of administrative convenience his Headquarters were fixed at Tehri. The District and Sessions Judge of Kumaun is also a Civil Judge of Kumaun and as such he tries and disposes off high valuation original suits. An Additional Civil and Sessions Judge is also appointed to help him whenever the workload justifies that appointment.

As regards administration of criminal justice, criminal jurisdiction was conferred on Kumaun officers in July 1817 under Regulation X of 1817 except in certain serious offences like murder, robbery, treason, etc. for the trial of which a Commissioner had to be specifically appointed by the Governor-General in Council. The Commissioner, so appointed, after recording

evidence in the case, used to submit his report to the Nizamat Adalat which passed the final sentence. It seldom became necessary to appoint a Commissioner under this provision. This Regulation was subsequently repealed by Act X of 1838, as a result of which criminal courts in Kumaun came directly under the control of Nizamat Adalat. Rules were made under the Act for administration of criminal justice which were later on superseded by the Criminal Procedure Code under which the Commissioner of Kumaun was appointed as the Sessions Judge. This officer thus exercised almost despotic powers as the High Court in civil cases and as Sessions Judge in criminal cases which would be exemplified by the following incident :

An appeal was being argued before Major-General Sir Henry Ramsay, Commissioner of Kumaun, relating to a money suit. The defendant's lawyer raised a plea that the suit was barred by limitation and the decree passed was wrong. Sir Henry is said to have asked the counsel "show me the law which bars the suit". With great gusto the counsel produced his copy of the Limitation Act and opened the page containing the relevant article. On this Sir Henry tore away the particular page and remarked that the article of Limitation Act, relied upon existed no more.

It appears the Commissioner of Kumaun ceased to be a Sessions Judge on the enforcement of Notification no. 1314/VI—48-1914, dated 26th March, 1914 (published at page 53 of the Rules and Orders relating to Kumaun), under which the districts of Almora, Garhwal, Naini Tal and Pilibhit were placed under Kumaun Sessions Division. Later on Pilibhit was removed from the jurisdiction of the Kumaun Sessions Court.

Kumaun was throughout a Scheduled District and Government exercised powers to frame rules and issue notifications under section 6 of the Scheduled Districts Act. It also extended the provisions of certain Acts to Kumaun under section 6 of the Act.

The Government continued to exercise its rule-making powers till

1935 when the Scheduled Districts Act was repealed. It was then for the first time that the laws promulgated by the Legislatures of the country applied to the Area of their own force, but the rules framed under the Act, and notifications issued thereunder remain operative until these are replaced by appropriate Acts of the Legislature, e.g., the Kumaun Nayabad and Waste Land Rules were replaced by the Kumaun and Nayabad and Waste Land Act (U. P. Act XXXII of 1948).

It may not be out of place to mention that under a U. P. Government Revenue (C) Department Notification, dated 24th February, 1960, a new division styled Uttarakhand has been carved out of the territories within the limits of the erstwhile Kumaun Division. Pithoragarh, Chamoli and Uttar Kashi tahsils of Almora, Garhwal, and Tehri districts respectively, have been upgraded into three districts which together constitute the Uttarakhand Division. The object was to have an integrated pattern of administration in the border area on the lines of North-Eastern Frontier Agency where the District Magistrate is the head of all the Departments and is directly responsible to the Chief Secretary of the State who functions as the Commissioner of the Division. The arrangements ensured quicker implementation of the policies of the Central Government which is naturally interested in the political administration of the area which touches China, Tibet and Nepal.

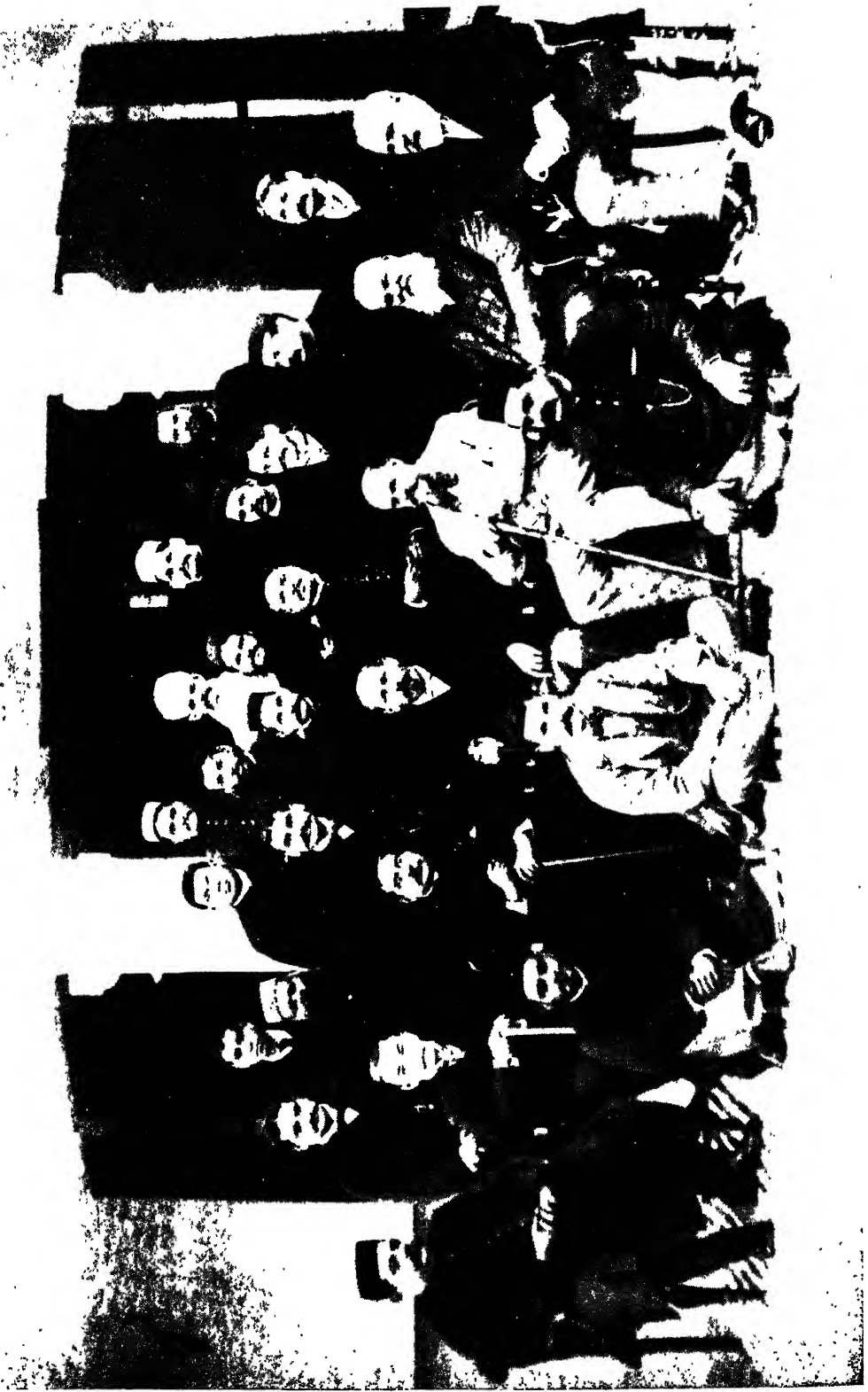
These political changes under Executive orders have not at all affected the pattern of administration of civil and criminal justice in Kumaun as the District and Sessions Judge of Kumaun (assisted by the Civil and Sessions Judges of the Tehri and Kumaun) continues to exercise jurisdiction over entire area comprising Kumaun and Uttarakhand Divisions, like all other District and Sessions Judges in the State.

The people of these two divisions enjoy the fundamental rights assured to every citizen of India under the Constitution and look upon the Allahabad High Court for the protection and enforcement of those rights.

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Pen Portraits of eminent Judges

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PHOTOGRAPH TAKEN ON THE RETIREMENT OF SIR JOHN EDGE, CHIEF JUSTICE, IN 1898

The Right Hon'ble Sir John Edge

By

SRI ARVIND KUMAR

Advocate, High Court, Allahabad

F the English Judges, who came to the Allahabad High Court, Sir John Edge is undoubtedly one of the most distinguished. Both as a Chief Justice of the N.-W. P. High Court and a member of the Privy Council, his name is associated with a number of celebrated judgments.

Sir John Edge was born in the year 1841. Precocious as he was from his early childhood, studies were his only passion in life. In his law examination he secured a certificate of merit from the Council of Law Society, United Kingdom in the Easter term of the year 1858. After practising for a few years as a Barrister, he got the "Silk", and, as a Queen's Counsel, he gave an excellent account of himself.

Apart from this legal career, Sir John Edge had keen interest in educational and political spheres, which is amply vouched by his phenomenal success as Vice-Chancellor of the Allahabad University.

Sir John Edge earned a name as the Chief Justice of the High Court of the North-Western Provinces from 1886 to 1898. His

contemporaries were Mr. Justice Mahmood, Mr. Justice Tyrell, Mr. Justice Straight, Mr. Justice Knox, Mr. Justice Brodhurst. For the first time, in the history of the High Court, it was ruled by Sir John that, under sections 588 and 591 of the (old) Civil Procedure Code, no appeal lay, under clause 10 of the Letters Patent of the N.-W. P. High Court, from an order of a single Judge refusing an application for leave to appeal *in forma pauperis*.¹ On the law of limitation, his various judgments are masterpieces. In *Parbati vs. Bhola*² he laid down that in computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under section 12 of the Limitation Act, be excluded, if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, but not otherwise.

Sir John continued as Chief Justice up to 1898. Behind his serious and judicious smiles, he had always sympathy and soft corner for the junior section of the Bar. He invariably helped and encouraged the juniors. He had all the attributes of a great Judge, and was always open to conviction. To his colleagues on the Bench, he was indeed respectful and affectionate. If there was difference of opinion, Sir John Edge would readily submit to the majority opinion. A very important judgment of April 2, 1889, delivered by the Full Bench, consisting of Chief Justice Sir John Edge, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrell and Mr. Justice Mahmood, needs a special mention, in which most of the Judges differed in their opinions. This judgment³ was on the point of admissibility, in evidence, of judgments not *inter partes* in criminal cases. In this case, for the first time,

¹ *Banno Bibi vs. Mehdi Hussain*, (1889) 6 Ind. Dec. 375 (All.).

² I.L.R. 12 All. 81.

³ I.L.R. 12 All. 1.

the Latin adage—*aut caesar aut nullus*’ i.e. either the judgments sought to be produced in evidence should be conclusive *inter partes* or they should not be admitted in evidence at all (unless they relate to a public custom or right or the factum of judgment be a matter in issue), was judicially considered ; and most of the Judges differed in their views. It is said that this was the only judgment which was reserved for long, which led to the rumour in the Bar that there was considerable difference of opinion between Sir John and Mr. Justice Mahmood. Such differences also occurred between the two Judges in several cases of Mohammadan and Hindu law.

In *Ram Kuar vs. Sardar Singh*,¹ decided on March 28, 1898, His Lordship ruled that a certificate may be granted under the Succession Certificate Act, VII of 1889, to a minor through his next friend. This was his last judgment before he resigned from Chief Justiceship.

On April 2, 1898, it appeared in the *Law Times* that Sir John Edge, Q. C., had been appointed a Member of the Council of India, in succession to Sir Charles Turner, K. C. I. E., whose tenure had expired in preceding February. By that time Sir John Edge was already known as great scholar of law.

In 1904, a Committee consisting of Sir Richard Henn Collins, Sir Spencer Walpole, K. C. B. and Sir John Edge, K. C. was appointed by the Home Secretary to enquire into and report to him upon the circumstances of the convictions of Mr. Adolf Beck in 1896 and 1904. The Master of the Rolls was appointed Chairman of the Committee. Sir John’s work in this Committee earned him great popularity. The Beck case was the most sensational case in 1896 and 1904, in the United Kingdom. In this report the Committee considered the conclusion of the Courts to be erroneous. The Committee’s report was published on December 3, 1904.

¹ 1898 Weekly Notes (NWP), p. 64.

Another recommendation of this Committee was to empower the Attorney-General in proper cases to move the High Court of Justice to vacate a conviction of an accused subsequently discovered to be innocent. Although the report of Sir John Edge caused great sensation in the politics of the country, so much so that he was obliged to give a statement in public in vindication of it, nevertheless he earned the gratitude of his countrymen for his contribution to the growth of the English law.

Now, we come to the stage of his greatest achievement, the Judicial Committee of the Privy Council. In July, 1908, he, along with Charles Milkes Gaskell, was sworn a member of the Privy Council, and, in July, 1911, was appointed to its Judicial Committee. In 1926 he relinquished his office.

Sitting in the Judicial Committee he delivered very luminous judgments. His experience as Chief Justice of one of the premier High Courts in India undoubtedly stood him in good stead in laying down the law for this country.

One of the important cases in the Privy Council to which Sir John was a party is on the interpretation of section 96 of the Code of Criminal Procedure. It is the case of *Loftus Otway Clerke vs. Brojendra Kishore Roy Chowdhary* of the year 1912. The Judicial Committee in its opinion to His Majesty remarked that the Code of Criminal Procedure uses the term "Court" and "Magistrate" generally if not always as convertible terms and that the Code contemplates the issue of a search warrant by a Magistrate under section 96 before any proceedings are initiated and in view of an "inquiry about to be made" by him under the Code.

*Mrs. Annie Besant vs. The Advocate General of Madras*¹ is another case of importance to the decision of which Sir John Edge was a party. The Judicial Committee in this case held that the power of the High Courts which inherited the ordinary or extraordinary jurisdiction of the Supreme Courts

¹ A.I.R. 1919 P.C. 31.

to issue writs of *certiorari* had not been taken away by the provisions of section 435 of the Criminal Procedure Code and section 115 of the Code of Civil Procedure but that the power to issue a writ of *certiorari* against any order of the Magistrate passed under the Indian Press Act, 1910, would be taken away by section 22 of the said Act. It was further laid down that section 4 of the Press Act was analogous to sections 124 and 153 A of the Indian Penal Code, as both attempted to balance two important public considerations, namely the undesirability of anything tending to excite sedition or to excite strife between classes and the undesirability of preventing any *bona fide* arguments for reform.

Delivering the judgment of the Judicial Committee on July 9, 1920, in *Sheokuarbai vs. Jeoraj*,¹ Sir John ruled that the Jains are of Hindu origin, that they are Hindu dissenters, but they have so generally adopted the Hindu law that the Hindu rules of adoption are applied to them in the absence of some usage to the contrary.

Sir John Edge was a party to the judgment in Privy Council Appeal no. 28 of 1925,² This is the last reported case of the Privy Council in the hearing of which Sir John participated as a member of the Privy Council Bench. The principle of law laid down in this case is that even great-grandson of a Hindu governed by the *Mitakshara* school of law, by birth acquires interest in joint family property; and sons, grandsons and great-grandsons are all liable for the debts of their ancestors to the extent of the assets inherited by them.

For the paucity of space, only a few of his judgments have been mentioned; there are many more which adorn the pages of Law Reports. His colleagues in the Judicial Committee always considered him a safe guide in the controversies involving personal law of the Indians.

¹ U.P.L.R. 1920 P.C. 161.

² A.I.R. 1926 P.C. 105.

Few have been the recipient of so warm tributes from their equals and colleagues as Sir John Edge. In his talk, which Rt. Hon'ble Ameer Ali gave in the Royal Society in 1925, he paid high tributes to the merit of Sir John Edge as a Judge. "His imprints of social upliftment were very often found in his judgments", said Lord Blavesburgh of Sir John Edge in his address in the Law Society. Even after his departure from India he was one of the most remembered persons. He was a man with wide sympathies and was free from colour complex. He was intellectually honest and had every reverence for the dissenting view of his colleagues. He lived a simple life and always delighted in sharing the comradeship of the common man.

A noble man and a great judge that he was, his death was widely mourned in India and England alike. We can justly be proud of him such as he was of his association with our Court.





MR. JUSTICE SYED MAHMOOD
First Indian Judge

Mr. Justice Mahmood

By

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IN building the legal process in India the fact that the Indian Judges borrowed from foreign precedents and traditions may readily be admitted, but what they said in their pronouncements was not a mere echo of the foreign precedents nor the offspring of the latter. The judicial precedents of the Indian Judges are not the deposit of any one particular system ; they are more liken to a mosaic of mingled shades and influences. The implantation of English Common law through statutes and codes into a polity so fundamentally different in bent and ethos from that of the Anglo Saxons was indeed a perilous experiment and if it was successful, it was so because of the reconciling influence of the Indian Judges. The task before the Indian Judges was by no means easy. The personal and the customary laws in India with vast gaps and interspaces in them could not be retained in the form

they were and the process of codification naturally increased the influence of Common law. Not in an inconsiderable measure the codification secured uniformity in the administration of justice but that alone could little fulfil the great ends of the rule of law. The need of the time seemed to be for the enlargement of the body of Common law doctrines with new faith and principles which were entirely alien from the former and held so sacred by the inhabitants of the Indian soil. But could the system emerging from this fusion work successfully merely by the application of isolated rules of Common law strung together by slender threads of foreign precedents. It needed something more and that was the determination of a path around which the living oracles of law could move in new conditions. That the English Judges could have built that path alone is an assumption rather gratuitous and perhaps an expression of the wonted belief of those who have not probed deeper into the reality. The truth is, it was largely, if not wholly, the work of the Indian Judges. The legal system in India in the form of statutes and codes is undoubtedly the bequest of the foreigners, for which we shall ever remember them with gratitude; but to have enabled such a legal system to rest on enduring foundations by discovering broader principles and distinctions and separating the essentials of jurisprudence from its historical and geographical accidents is mainly the achievement of the Indian Judges. It were they who accomplished the unison of Common law with Indian customs and beliefs without breaking the intrinsic unity of either or destroying their own heritage and for their talent and erudition they may ever remain the envy of the ablest on the Woolsack, nay, the ablest in any judiciary. Of the distinguished Judges who had a share in this work, one was Mahmood.

Perhaps no one lives today to convey his reminiscences of

Mr. Justice Mahmood and we can only think of his personality in terms of his pronouncements. How he sat and judged is not visible to human eyes but his written words are preserved to enable us to perceive his lofty stature. He belongs not to a near past but his distant footsteps still echo through the corridors of time. No gallery of judicial portraits which does not include Mahmood can pretend completeness. He was the first Indian Judge to be elevated to the Bench of the Allahabad High Court, but that is not his only claim to fame and remembrance. His distinction rests upon his pronouncements, the flames of which remain undimmed unto this day.

Born at Delhi in 1850, he was the second son of Sir Saiyed Ahmad Khan. Mahmood's childhood did not give any indication of his future nor his educational career was marked by any phenomenal achievement. After completing his early education at Delhi and then at Queen's College, Benares, he proceeded in 1869 on a Government of India scholarship to join the Christ Church College, Cambridge. At Cambridge he had a successful academic career and attained proficiency in oriental and classical languages; yet it was not sufficiently distinguished even for the most prophetic of professors to predict that the young graduate was one day to blaze as a bright star in the firmament of law. He was called to the Bar in 1872 and on return to India in due course he joined the Allahabad Bar. Not much is known of his achievements at the Bar and perhaps there may be none, for he did not stay there long to make them. In 1879 he was appointed a District Judge at Rae Bareilly and it was within three years that he was selected to officiate on the High Court Bench at the early age of thirty-two, an age when most of the young lawyers are still emerging from obscurity. During the brief span of his district judgeship Mahmood gave judgments which

could do credit to any distinguished Judge of the High Court. Unlike most of the district judges, he was not a mere satellite revolving round the dictums of the High Court. His exposition of law in his judgment in the case of Deputy Commissioner, Rae Bareilly *v.* Raja Ram Pal Singh delivered as a District Judge, Rae Bareilly so much struck the eyes of the members of the Judicial Committee of the Privy Council that they while expressing their concurrence in their judgment in P. C. Appeal No. 3 of 1882 with his opinion were said to have conveyed to the Secretary of State of India their view that so talented a person should not be wasted in the subordinate judiciary. The elevation of Mahmood to the High Court Bench so early was a fulfilment of the desire expressed by the Judicial Committee. After expiry of his officiating term he reverted to the Bar. His permanent appointment as a Judge of this Court came in 1886.

The latter part of the 19th century may very aptly be described as the Augustan age of the Indian judiciary. With Sir Guru Das Banerji in Calcutta, Muthu Sami Aiyer in Madras, K. T. Telang in Bombay and Mahmood in Allahabad, the High Courts in India had the semblance of a sanctuary where distinguished luminaries in law with impeccable vision sat like sages to expound the immutable principles of jurisprudence for the future generations. Comparisons are odious and to say that each one of them was great and illustrious in his own way would be nearer the truth. Nevertheless it is equally true to say that few men in the sphere of law have won the same unquestioning recognition as Mahmood. It was not in vain that Sir Whitley Stokes in his general introduction to Anglo Indian Codes remarked, "Of these judgments none can be read with more pleasure and few with more profit than those of the Hindu Muthu Sami and

the Mohammadan Syed Mahmood. For the subtle races that produce such lawyers no legal machinery can be too elaborate”.

The number of his judgments to be found in the law reports are many and cover a wide range of subjects. His exposition of legal principles in some of his judgments invests them with the status of a treatise on law. It is difficult to say which of them is his *magnum opus*, nor delineation of each of them is otherwise possible ; hence only a few of them may be referred just to illustrate his legal acumen and innate sense of justice. Jurisprudence to Mahmood was a branch of philosophy wherefrom all human laws were derived and law was most worthy of approval only when consonant with reason—*Lex plus laudatur quando rationae probatur*. His luminous judgment in the full bench case, *Empress v. Phopi* reported in I. L. R. 13 Allahabad 171 is best illustrative of his concept of law. Mahmood dissenting from the majority answered that mere notice on the prisoner was not enough and that it was imperative that he should either be heard in person or through counsel. The words “after hearing the appellant or his pleader if he appears” round which the controversy centred, were interpreted by him to mean a condition precedent for the disposal of the appeal with the right of hearing being inherent in it and the reason for it as seemed to him was that when a man asserted a right, he had to be heard, for the remedy itself implied a right which was not to be confounded with the mode of presentation. The *fons et origo*—source and origin—of the maxims *audi alteram partem* and *ubi jus ibi remedium* was not local but human jurisprudence and his deep sensibility of it is evinced by the following passage of his judgment :

“It is no use tying a person by the leg making it impossible for him to appear and then saying to him we are to hear you if

you appear, when all the while we know that we have made his appearance impossible”.

It is unfortunate that the majority on the full bench should have failed to perceive the sublimity of his viewpoint. The reason for it is rather traceable to contrariety of fundamentals of the two. To Mahmood ‘hearing’ seemed imperative to render a process just, it was sacrosanct being the creation of *summum jus*. Those who dissented from him could not see any sacredness in the right of hearing for they were more prone to keep law and equity asunder instead of joining the two. The great judge viewed the station of justice in the perspective of Divinity and any outrage upon it, if not redressed by human agents on the earth, shall have to be recompensed by the Creator. Nothing better would convey the poignancy of his feeling than the following Urdu couplet which he quotes in his judgment :

Qarib hai yar roze maibshar
Chhupega kushton ka khun kyun kar
Jo chup rabegi zubane khanjar
Labu pukarega aasteen ka.

His own translation of these lines is “Oh friend ! the day of judgment is near, how then will it be possible to conceal by silence the blood of those killed. Even if the tongue of the dagger will keep silence the blood on the sleeve will speak out”. His pronouncement may not have the force of a precedent but surely it shakes our soul and that is enough recognition of it.

In *Matadin v. Kazim Husain*, a full bench case reported in I. L. R. 13 Allahabad 432, Mr. Justice Mahmood dissenting from the majority held that the word “property” was used in a most generic sense and included the right known as equity of redemption. The majority view was that the term “property”

meant an actual physical object and did not include mere rights relating to physical objects. The premise upon which Mahmood's conclusions were founded was that the phrase "transfer of property" as occurring in Section 58 of the Transfer of Property Act included what was known to the English law as the equity of redemption. While pointing out the distinction between the English and the Indian law of mortgages in the course of his judgment he says, "that an Indian mortgage of any kind does not mean the conveyance of property absolutely to the mortgagee so that even if the English technical phrase 'legal estate' as distinguished from the 'equitable estate' were to be imported into the Indian law of mortgages, it must be held that notwithstanding the execution of mortgage of any kind the legal estate vests not in the mortgagee but remains in the hands of the mortgagor, for he continues to be the owner of the property entitled to deal with it as he likes, subject of course to the incident of the mortgage which he has already executed." Ultimately the decision of the majority in this full bench case was overruled by a subsequent full bench in the case of *Rama Shankerlal v. Ganesh Prasad* reported in 29 I. L. R. Allahabad page 385. The members of the latter full bench felt obliged to accept Justice Mahmood's exposition of the word "property" and laid down the law in terms of the ratio contained in the dissenting judgment of Mahmood in *Matadin's* case.

His notable judgments on Mohammadan law are many but it may not be possible to refer to each of them. One of such judgments is in the full bench case of *Jafri Begum v. Amir Mohammad Khan* reported in I. L. R. 7 Allahabad 822. The main question referred to the full bench was "whether upon the death of a Mohammadan intestate who leaves unpaid debts with reference to the value of his' estate, does the ownership of such

estate devolve immediately on his heirs or such devolution is contingent upon and suspended till payment of such debts". His answer that existence of debt did not affect devolution, proceeding upon the works of Baizawi (the greatest commentator of Qoran), Alsirajiyah and Hedaya, belong more to the realm of a treatise than a mere pronouncement. As a piece of historical investigation the judgment stands supreme for it illumines many a dark corners of the Mohammadan law. Another noteworthy judgment delivered by Mr. Justice Mahmood on Mohammadan law is in the full bench case of Mohammad Allahdad Khan *v.* Mohd. Ismail Khan reported in I. L. R. 10 Allahabad 289. The suit giving rise to the appeal before the High Court related to the exact scope of the rule of the Mohammadan law arising from acknowledgment of parentage. The questions involved were "what according to the Mohammadan law is the effect of an acknowledgment by a Mohammadan that a particular person born of the acknowledger's wife before marriage is his son and how does such acknowledgment affect the status of the person in reference to whom it is made". In answering the reference he held that although according to the Mohammadan law acknowledgment in general terms stands upon much the same footing as an admission as defined in the Evidence Act, acknowledgments of parentage and other matters of personal status stand on a higher footing than matters of evidence and forms part of the substantive Mohammadan law. In his opinion where legitimacy could not be established by direct proof of a valid marriage, acknowledgment had been recognised by the Mohammadan law as a means whereby marriage of the parents or legitimate descent of the child may be established as a matter of substantive law and that such acknowledgment always proceeded upon the hypothesis of a lawful union between the parents, for there was nothing in

Mohammadan law similar to adoption as recognised by Roman and Hindu systems, or admitting of an affiliation which had no reference to consanguinity or legitimate descent. The judgment of Mahmood, J. in this full bench case is so elaborate and comprehensive that even the best of its summary would give only a faint echo of the original and without quoting his own words one may not do justice to his composition. He observed : "And I have no doubt that I am representing the views of the Mohammadan jurists rightly when I say that there is no warrant in the principles of the Mohammadan law to justify the view that a child proved to be the offspring of fornication, adultery or incest could be made legitimate by any act of acknowledgment of father. I repeat that the rule is limited to cases of uncertainty of legitimate descent, and proceeds entirely upon an assumption of legitimacy and the establishment of such legitimacy by the force of such acknowledgment."

Hindu law was not left untouched by Justice Mahmood and though his pronouncements on the subject are not many, still the few that are contained in the law reports are not lacking in massiveness or excellence, characteristic of his judgments. His conclusions in *Binda v. Kaushilya* (I. L. R. 13 Allahabad 126) where he upholds the right of a Hindu husband to sue for restitution of conjugal rights, are largely founded upon original texts. Sir Tej very aptly observed : "It must be said to the credit of Mr. Justice Mahmood that at least with respect to the Hindu law, he like the late Mr. Justice Ranade, always attempted to reconcile the wisdom of ancient sages to the mixed civilizations of their descendants."

In the sphere of procedural enactments, Mahmood always leaned in favour of widening the scope of the statutory rules. The procedural laws, as he conceived them, were subservient to substantive laws, a mere means to the ultimate end. He never

acquiesced in a construction which limited the operation of a rule so as to entail deprivation of substantive rights. In his dissenting judgment in the full bench case of *Nar Singh Das v. Mangal Dubey* (I. L. R. 5 Allahabad 163) he says "the courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law". Why to such a sound rule of interpretation the majority should not have agreed, one woefully pauses to think. The soundness of Mahmood's above exposition was recognised by the late Sir Ashutosh Mukerji who, in all fairness to truth, followed Mahmood's reasoning in *Nar Singh Das's* case in his judgment delivered in *Chhayunnessa Bibi v. Kazi Basirar Rahman* (5 Indian Cases, 532).

Chitor Mal v. Shib Lal is another leading case which had raised a controversy of unusual nature. It was on the doctrine of salvage and his judgment is remarkable for the emphatic way in which he censured the English law as being unreasonable so far as it restricted the doctrine of salvage purely to maritime salvages. He found little justification for putting the perils of the sea on a separate juristic footing from those arising on the land and to express his indignation he observed "but why that equity should stop at the sea-shore, I frankly and respectfully confess I am unable to conceive for I cannot help feeling that doctrines of equity are no more governed by the peculiarities of the sea than by the peculiarities of the land".

In the year 1887 the High Court was faced with a grim situation in the case of *Lal Singh v. Ghanshyam Singh* (I. L. R. 9 All. 625). The question to be resolved was that when a vacancy had occurred in the Court reducing the number of Judges originally appointed

under clause 2 of the Letters Patent, whether the omission by Her Majesty and the local Government to fill up the vacancy had vitiated the constitution of the Court. By clause 2 of the Letters Patent it was provided that the Court until further or other provision should be made in accordance with the Act, shall consist of a Chief Justice and five Judges, and the first holders of these offices had been named, and on the basis of this provision the argument of the learned counsel was that as at the relevant time the Court consisted of only the Chief Justice and four Judges, and in the absence of any provision authorising less than the full number of Judges to exercise the powers of the Court defined in clause 2, the Court whose jurisdiction had been created and defined by the Letters Patent no longer existed. The matter was heard by the entire Court and the unanimous opinion of all the Hon'ble Judges including Mr. Justice Mahmood was that by clause 2 of the Letters Patent it was not intended that if the Crown or the Government should omit to fill vacancy among the Judges under the powers conferred by section 7 of the High Courts Act so that the Court should then consist of a Chief Justice and four Judges only, the constitution of the Court should thereby be rendered illegal, and the existing Judges incompetent to exercise the functions assigned to the High Court. In negating the objection of the late Pt. Ayodhya Nath, Mr. Justice Mahmood's statement of law so succinctly put by him in his judgment is "Now it is very important to note that whilst in connection with the appointment of Chief Justice the Statute employs the expression 'shall appoint'. The same section in connection with the appointment of Puisne Judges uses the phrase 'it shall be lawful' for the Government to fill up the vacancy. The change in the language is remarkable and I understand it to be a well known rule

of construing statutes that when in one and the same section which relates to any special purpose two expressions of such different meanings are employed, the Legislature must be taken to have intended a distinction. This being so, the phrase 'it will be lawful' cannot be held to mean that it was imperative upon the Government to fill up any vacancy in the office of a Puisne Judge of this High Court". Although the point was sufficiently settled by the Full Bench judgment still he was not complacent. Lest such a situation should arise again he in his minutes to the draft bill of 1889 moved in the Parliament suggested for defining the phrase 'High Court'.

I have left till the end one of his classic judgments without mention of which a catalogue of his pronouncements can scarcely be regarded as complete. This brings me to the leading Full Bench case of *Govind Dayal v. Inayatullah* on the law of pre-emption reported in I. L. R. 7 Allahabad 775. The earlier decisions on the right of pre-emption seemed to founder on the mistaken belief that the right of pre-emption was a personal right of repurchase involving a new contract of sale. Mahmood in tracing the history and nature of the right of pre-emption has established that such a right is simply a right of substitution and is an incident of property entitling the pre-emptor by reason of such legal incident to stand in the shoes of the vendee in respect of all rights and obligations. On this aspect of the law his opinion seems to be unquestionable but a doubt lingers on as to the correctness of his opinion on the other part of his answer that right of pre-emption never existed under the old Hindu law and was essentially a creation of Mohammedan jurisprudence.

In fact the right of pre-emption was equally recognised by Hindu law, and this humble assertion finds support in *Mahanirvana Tantra* (Shlokas 107 to 112, Chapter II). The fallacy in Mahmood's

approach appears to reside in the assumption that custom of pre-emption could grow up only under the Mohammedan law. He wrongly thought that such right had never been recognised by the Hindu law. The shlokas in Mahanirvana Tantra have been translated by the late Shri Shyama Charan Sarkar and fully discussed by him in his works Vyavastha Chandrika, Volume II, Part I, page 626 as well as in Vyavastha Darpan, Volume I, page 643 (1883 Edition). The translation of these shlokas is as follows :

“The proprietor of an immovable property having a neighbour able to purchase it, is not at liberty to sell such property to another. Among neighbours he who is an agnate or of the same caste is preferred. In default of them a friend (here) the will of the seller prevails. Even if the price of an immoveable property be settled by another, yet if a neighbour, desiring to purchase it, tenders that price he becomes the purchaser and not the other. If the neighbour be unable to pay the price or give consent to the sale then the householder (i. e. the land-holder) is at liberty to sell it to another. ‘O Goddess (Shiva addressed all the Shlokas to Parvati)’. If an immoveable property be sold in the absence of the neighbour and he (the neighbour) pays the price immediately on hearing (of it), he is entitled to have the same. If, however, the purchaser has made houses and gardens thereupon or destroyed them (then) the neighbour is not entitled to have (such) immoveable property even by paying the price.”

Sir William Macnaughten, an eminent scholar of Hindu and Mohammedan law, has, in the preface of his work on Mohammedan law, quoted the shlokas mentioned above and his observation : “but it remains to be decided whether this shall be held to be the prac-

tical law or not", cannot be understood to mean that he doubted the authenticity of these shlokas. It would not be fair to whittle down the genuineness of these shlokas on the ground that they have not been cited in the later commentaries on the Hindu law nor recognised in the current law books and that the Mahanirvana Tantra is not mentioned in the list of tantras. Needless to say that the value of this work is not to suffer by the fact that it has not been reviewed in many of the current commentaries on Hindu law. As emphasised by the late Mr. Sarkar, this Tantra ranks equal in sanctity to the vedas and its ordinances should doubtless override even those of the sages for Mahanirvana Tantra according to the belief of the Hindus is said to have been revealed to this world by Mahadeva one of the Gods of the Hindu trinity. Then factually too it would be incorrect to say that Mahanirvana Tantra is not recognised as one of the ancient tantras. Mahmood's denunciation of Mahanirvana Tantra as not being an ancient work and the shlokas therein as interpolations is built upon his unawareness that Mahanirvana Tantra is one of the set known as Rath Kranta Tantra which has been referred to in Agni Puran and Padma Puran. With all this fallacy to which it has been my truthful, though disagreeable, duty to allude to, the judgment in Gobind Dayal's case stands as a *locus classicus* on the law of pre-emption. It is vain to hope that the truth dwelling in the innermost recesses of the texts on Hindu law shall ever emerge out to vindicate itself.

These extracts of the reported cases do not represent more than a fraction of the judicial pronouncements of Mr. Justice Mahmood, for my selection has been confined to decisions of admitted significance and of present value. Many may miss cases to which they attach importance and some explanation might be due to them. As one ransacks the law reports of the seven years one would

find them an expanse where one would easily lose his way and the possibility of omission of something which should have been included there is always inherent in a task so difficult as this.

Few might be aware of the memorable minutes of Mr. Justice Mahmood, which strangely enough have remained veiled from the public eye so long. The minutes of Mr. Justice Mahmood are on the draft bill intended to be introduced in the Parliament and special provisions to be contained in the Letters Patent. This bill was introduced in the Parliament in the year 1888, the main aim of which was the extension of the territorial and other jurisdiction of the existing High Courts, and was intended to be a kind of supplement to Statute 24 & 25 Vict. c. 104. The suggestion of Mr. Justice Mahmood to this draft bill was that the bill should empower Her Majesty to extend the High Courts' jurisdiction to any territories which had either been assigned to the Government of India or over which jurisdiction had been granted by native States to the Government of India. Section 3, Statute 28 & 29 Vict. c. 15 enabled the Governor-General-in-Council to empower the High Courts "to exercise any such jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of such of the provinces and States of India in alliance with Her Majesty as the said Governor-General-in-Council may in the manner aforesaid from time to time determine. In his minutes he suggests for provision of an additional clause in the proposed bill to enable the Government of India to achieve the object of the bill. The reason for it he assigned was that the power under section 3 was limited to "Christian subjects of Her Majesty" and secondly that it extended to territories which had neither been assigned nor had jurisdiction in respect of them been granted to the Government of India by the Native States. He suggested that the phrase "personal jurisdiction" occurring in section 2

of the draft bill being susceptible of some ambiguity and likely to give rise to doubts in its interpretation in a country like India where the population was not homogeneous necessitated a substitution "to obviate the possibility of any argument being raised to the effect that a native Judge of a High Court was precluded from exercising any jurisdiction by reason of his personal nationality".

In view of the expected extension of the High Court's jurisdiction to Oudh he emphasised the necessity of defining the phrase 'High Court' as it occurred in Statute 24 & 25 Vict. c. 104, especially in section 13 of that enactment. The necessity for such definition, as pointed out by him in his minutes, arose from the fact that the success of the proposed amalgamation of the two Courts depended upon the rules that the Court may frame under these sections. In this connection he recommended for the increase of jurisdiction of single Judges in civil matters and for criminal appeals especially those involving sentences of transportation for life he voted for their disposal by a Bench consisting of at least two Judges. His statement in his minutes is "so strongly do I entertain these views that when I believe, I had a chance of being appointed to act as Judicial Commissioner of Oudh, I had made up my mind to decline the office if it were offered to me upon the ground (not purely one of sentiment, but of conscience) that in my opinion no single human being should sit as a Judge over the life of another". At another place in his minutes he records "All the more caution is necessary as in criminal cases no appeal lies to the whole Court under section 10 of the Letters Patent as it does in civil cases, however, petty or small they may be. My fear is (and I say this with due respect) that under the present rules of the High Court much greater importance is attached to the property of persons than to their lives and liberties".

Another reason which he found for a careful definition of the phrase "High Court" was the lurking danger of confusion between the requirements of the Statute as to vacancies in the office of the Chief Justice and vacancies in the office of Puisne Judge. This danger had once stared the constitutional authority of the High Court in the case of *Lal Singh v. Ghanshyam Singh* and the prospect of its repetition was certainly to be guarded against.

Other suggestion which he put forward was for stationing one Judge permanently at Lucknow and for deputation of a second Judge by rotation to make up a bench for disposal of such cases at Lucknow which under the rule could not be disposed of by a single Judge.

In his views on the question of language, he was not wholly of his time. The dismissal of appeals without any hearing on the solitary ground of the appellants' failure to translate the record of the case into English was, as he felt, travesty of justice. His words of censure as contained in the Minutes are : "I think in view of the vast population which will be affected by the rules or practice as to enforcing translations, the matter is sufficiently significant to be taken in hand by the Government which is responsible for the peace and administration of the country, rather than be left to considerations relating to the convenience of the Judges. The truth is that the rules as to translations into English involve so considerable an expense on the part of litigants, that they practically amount to imposing a tax upon the litigant population and I am afraid in some cases amount to a denial of Justice. I say this with due respect for the opposite opinion. The costs of these translations become costs in the cause, so that a rich litigant is practically free to swell the costs of a litigation against a poor man by getting the record translated even in petty cases." He strongly deprecated a

state of things in which Hindustani would be absolutely precluded even where speaking English was absolutely impossible-or where the suitor was unable to retain the services of English speaking pleaders. He accordingly recommended that the draft bill should contain a section somewhat on the lines of section 3 of Statute 28 and 29 Vict. c. 15, that it shall be lawful for the Governor-General-in-Council by Order to declare from time to time what language shall be the language of every High Court and to make rules for employment of interpreters and the scope and extent of translations into the language so declared to be the language of the Court.

These suggestions of Mr. Justice Mahmood were, however, unacceptable to his honourable colleagues on the Bench. On every proposal their note was one of complete dissent. There can be no doubt that time has avenged most of his proposals which had wrecked on the disapproval of his contemporaries. Mahmood's statement in his minutes is a model of intellectual conscience. His endeavour was to give the procedure in Courts a new contact with things.

The period of seven years during which Justice Mahmood sat on the Bench was rather short, nevertheless a lustrous one for the Allahabad High Court. In 1894 he resigned from the Bench. The circumstances in which he had to do so are rather sad to narrate. In this brief span he brought to law reports a wide store of new concepts which had hitherto not leaped to light. His exit from the Bench was the sorrow of each and everyone in the sphere of law for no longer was his voice to be heard in the High Court or the law reports. Some time after he was nominated a member of the Legislative Council for the North-Western Provinces ; but there is not much to say of his work there. In the closing years of his life he resumed practice in the Judicial Commissioner's Court at Lucknow. Late

Dr. Satish Chandra Banerji worked with him as his junior. On 8th May, 1903 at the age of fifty-three he passed away leaving behind his footprints on the sands of time. Divinity did not bless him with longevity but that is not to be our sorrow. He filled his brief span with the scores of lifetime. Of him it may be said—

*Loveliest of lovely things are they
On earth that soonest pass away
The rose that lives that little hour
Is prized beyond the sculptured flower.*

Living men are often exposed to the reproach of their equals and rivals. The more a man belongs to posterity so much the more unacceptable he is to his contemporaries but that was not so with Mahmood. He could verily be proud of recognition by his equals and contemporaries. That Muthusami Aiyer should have come all the way from Madras to Allahabad to meet Mahmood speaks of Muthusami's real admiration for him. Mahmood was intellectually uncompromising but not vain. Perhaps few may have been so faithful to the traditions of intellectual integrity as Mahmood. Speaking of Mahmood's deep reverence for his contemporaries Dr. Satish Chandra Banerji writes—"I may, however, note in passing that I have heard Mr. Mahmood observe that a Judge of fact is greater than a Judge of law and imply that he had been more of a Judge of law than fact. He used to express highest admiration for Dwarka Nath Mitter and Muthusami Aiyer, and once told some Mohammedan gentlemen in my presence that he was not worthy to untie the latches of the shoes of the two eminent Judges." Indeed large was his bounty and soul sincere.

Thus came to a close a life so vivacious, so radiant, yet so gloomy—a life indeed as moving as any of his judgments he toiled to

write. Eardley Norton speaking of Muthusami Aiyer said "he was a great Judge because he was a just Judge", and without apology the same may be said of Mahmood. Both were animated with a purpose which seemed to them greater than their compositions—a purpose of which the composition is only an instrument, a medium. Whatever errors may have crept into his expositions, they neither blemish their excellence nor vitiate his conclusions. It is not given to mortals to either plan with perfect foresight or to always act with unerring judgment; to be infallible is the prerogative of Divinity, to be so to the utmost of one's ability is the glory of man. His constant aim was the deliverance of reason from the servitude of oppressive constructions, to plant latent truths by rooting out illusive conceptions. "Judges must beware of hard constructions and strained inferences ; for there is no worse torture than the torture of laws", says Bacon, and perhaps awareness of this maxim seems to have taken deep roots into the soil of his intellect. Many of the truths even in his dissenting judgments have not sunk into oblivion, they would rise again. No principle he ever laid down was without testing it on the anvil of eternal truths and verities which he believed and, truly, had their origin in the bosom of God. With all reverence for judicial precedents he never allowed them to usurp the place of basal principles. If he broke away from the contemporary tendencies it was because he had the realisation of the inevitability of things. He had a rare vision of the realities of life, and a still rarer talent of making his vision objective. There was nothing like "last word" for him. The certitude in him never rendered his mind impervious to a contrary opinion. Perhaps no other Judge has a larger number of dissenting judgments to his credit than Mr. Justice Mahmood, but then it was inevitable. A seeker of principle that he was, he was never afraid to scale his isolated peak when he had discovered one. To him the

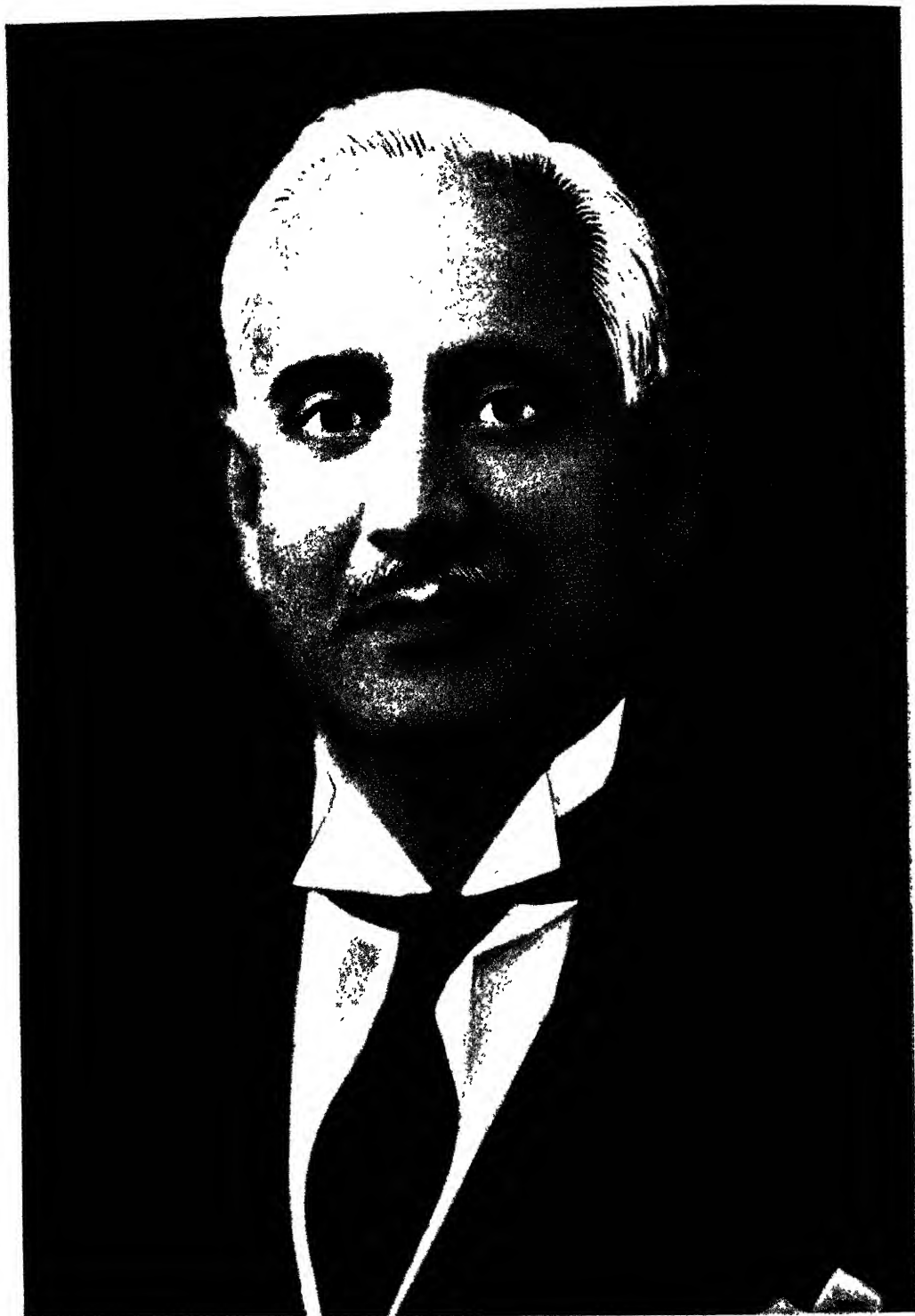
apparent was not always the reality, others did not go beyond the obvious. Intellect is the faculty of seer, it discerns truth as a living thing and the relationship of principles to each other. The flame that illumines the cloud is god-sent. This faculty he possessed in the largest measure and so also the flame, and in any case, much more than those who sat with him in adjudications.

On the whole if we consider the scope of his pronouncements it would be difficult to deny him the place claimed for him. History is made only in those periods in which the reality struggles against its contradictions, the periods of submission and acquiescence are but blank pages in it. The years of Mahmood in the Allahabad High Court were the epoch-making years in the history of the Court, for never before concepts in law were faced with more ardent assertions and their vehement repudiations. Contradictions of reality resolve rather slowly and when resolved, there remains only the reality and not its contradictions. In the perspective of eternity it has always been so and it would always remain so and this is our hope for the vanquished propositions of Mahmood. If they have not been recognised so far, our penitent intellect would be impelled to bend before them some day. Mahmood's enunciations are the light of law and he who follows them shall not walk in darkness. He dazzles not by the reflected light of favourable circumstances but by his own intense incandescence. His great contemporaries may have equalled him but never excelled him. His is not a fleeting niche in the hall of fame, his shadows lengthen out to remote posterity. Never was any man so great a stimulus to succeeding generation of lawyers and Judges as Mahmood and if some day we seem to be above him it would be because he has raised us on his shoulders. He is gone leaving behind his anchor by which we may steady our ships. But was it indeed a life without its portion of blames and failings. That any life

can ever be so is difficult to conceive, at any rate, in human ken. It is an assumption we cannot cavil at, and for his shortcomings, whatever they may have been, we may only say they were that of his epoch or those imposed upon him by circumstances; his virtues and goodness were his own !

Neither lamp nor rose adorns his grave; from his mortal clay lying beneath we hear the echo of four words "*Lex est dictamen rationis*"—Law is the dictate of reason.





THE HON'BLE SIR SHAH MOHAMMAD SULAIMAN, CHIEF JUSTICE

Sir Shah Muhammad Sulaiman

By
Mr. JUSTICE R. S. PATHAK

THERE are few names in recent times which have aroused the imagination of the young lawyer so profoundly as that of Sir Shah Muhammad Sulaiman. Within the years given to him, he achieved a versatile excellence and an intellectual brilliance which dazzled the generation in which he lived. Like a meteor blazing its luminous course across the heavens, he left a trail of glory behind. That glory occupies a place of pride in the history of this Court.

His versatility embraced many fields, and because of the liberal tradition which was so fully expressed in him he can be said to have belonged not merely to his generation but to a line which, reflecting the genius of the human race, has moved with unbroken continuity through the centuries. In another age and in another place, he would have ranked among the great Elizabethans. His powerful questing mind, alert in the constant pursuit of Truth and devoted to the service of enlightened human values, impressed its seal on all that he did. In him, the three great driving forces of civilisation—Law, Science and Education—found a remarkable meeting place.

Added to this was a love of literature which manifested itself in his keen interest in Persian and Urdu verse.

Shah Muhammad Sulaiman was born on February 3, 1886. His father, Maulvi Muhammad Usman, was among the leading members of the Bar at Jaunpur. His forbears, we are told, included a physicist.

From the very beginning, young Sulaiman distinguished himself in school and college. Devoted to his studies, he was an outstanding scholar. A first division in the Matriculation Examination and thereafter in the Intermediate Examination was followed at Muir Central College by a first division with the first place in the B. A. Examination of 1906 held by the University of Allahabad. It is interesting to recall that about the same time another brilliant student, Syed Fazl Ali, who was also later to play a significant part in the world of law, was attracting attention at Queen's College, Benares. In the same year, he secured a first division with the first place in the B. Sc. Examination. Of the two, Sulaiman obtained five more marks in the aggregate than Fazl Ali and this won him the United Provinces State scholarship for higher education in England. The scholarship enabled him to proceed to Cambridge. An assiduous student throughout, his ability earned him the Tripos in Mathematics in 1909 and the Tripos in Law the next year. Fazl Ali, who backed by financial support from his family had also proceeded to England, followed a parallel career. In 1909, both appeared in the Indian Civil Service Examination, and both were unsuccessful. They then decided upon the profession of law. Fazl Ali returned to India. Sulaiman, however, remained to qualify for the degree of Doctor of Laws from the University of Dublin. It was characteristic of the times that a doctorate in law was generally considered to confer added advantage in the legal profession. After being called to the Bar from the Middle Temple, Sulaiman returned to India in 1911.

For some time, the young barrister practised at Jaunpur, associated with his father in his many and varied cases. But his eager spirit and

the yearnings of a youthful ambition chafed under the limitations of a law practice restricted to the district. And so the year 1912 found him moving over to the High Court at Allahabad.

There were leaders at the Allahabad Bar whose towering fame and high reputation for learning and forensic skill had travelled far and wide throughout the country. There were Mr. Jogendra Nath Chaudhri, Pandit Sunder Lal, Pandit Moti Lal Nehru and Dr. Satish Chandra Banerji. Emerging into prominence were Dr. Tej Bahadur Sapru and Mr. B. E. O'Connor. Among them, and inspired by them, Sulaiman soon came into his own.

In his early years in the profession, the young lawyer faces many trials. Pressed by the need to provide for himself and his family and often spurred by the ambition to distinguish himself in a fiercely competitive profession, he finds little time for those several diversions which beckon to the young man. To succeed, he must steel himself against their temptation, and with single-minded and almost fanatical devotion he must divide almost all his waking hours between preparing his briefs and keeping abreast of the law journals. Sulaiman did not spare himself. He maintained a familiarity with the law as enunciated in the text-books and developed by contemporary case-law which would be the envy of any lawyer today. His indefatigable industry and unremitting toil, as well as a considerable attention to detail, impressed the Judges of the Court and his seniors at the Bar. Often overwhelmed by the several briefs for the next day in Court, he sat in his office working late into the night and not infrequently oblivious of the hour for dinner. It is said that his wife, discovering that her repeated messages requesting him to rise for dinner were of no avail, would adopt the desperate strategy of switching off the electricity mains so that the office was plunged into darkness.

Barristers practising at the Allahabad Bar had so far generally confined themselves to criminal practice. Sulaiman was among the first to break

from tradition. He travelled widely into the civil law and soon commanded an extensive civil practice. He was in demand not merely in the High Court but also in districts far removed, and with the growing volume of his work began to emerge as a leader at the Bar. He was clear-headed, and quick to appreciate the demands of each case. In argument, he possessed a clear, incisive style which unburdened by embellishment or flourish quietly carried his point home.

His comprehensive grasp of the law and his brilliant and discriminating intelligence attracted the attention of two successive Chief Justices, Sir Henry Richards and Sir Grimwood Mears, and, at an age still comparatively young, he was offered an officiating appointment on the Bench. He officiated as Judge of this Court from April 15, 1920 to August 11, 1920, and then followed two brief periods in 1921 and 1922. He returned to the Bar and resumed practice, but his return was short-lived. His judicial acumen and talent, which had drawn favourable notice from all those who had appeared before him during the periods of his officiating appointment, moved the Government to offer him a permanent seat on the Court. On April 4, 1923, he was elevated to the Bench as Puisne Judge, and the occasion is recorded by the Allahabad Law Journal Reporter with this appreciation :

“Dr. Sulaiman’s career in the High Court has been one of uniform brilliance and it must be a great sacrifice on his part to accept the Judgeship of the High Court. In doing so, he has upheld the best traditions of the Bar which require that a successful advocate is bound, in point of moral obligation to the State, to serve on the Bench when called upon by His Majesty the King to do so. As an officiating Judge, on two occasions, he made himself universally popular among all sections of the Bar by his courtesy, patience, and evident desire to do justice.”

The Judge now replaced the lawyer. Sulaiman brought to the judicial scene a combination of qualities which very soon placed him among the great

Judges of the Court and, indeed, among the outstanding of the country. As Sir Tej Bahadur Sapru was to observe later :

“Nature had endowed him with gifts of an extraordinary character. Possessed of a penetrative intellect, a mind which could dissect and analyse things as very few other minds could, a power of expression and exposition, he did not take much time on the Bench before he made everyone feel that we had got a Judge of unusual ability and unusual gifts . . . He earned the respect of everyone for his depth of learning, for his sweep of mind and for the promptness of his decisions.”

He was open to conviction to the last, and even, it is said, after the hearing had concluded. Amiable in temperament, he encouraged junior counsel to give their best to their case, and it is universally acknowledged that no junior appearing in his Court ever felt nervous merely on the ground that he was opposed by eminent senior counsel. But he possessed little patience for the idle point or frivolous submission and, although controlled by his deeply ingrained sense of courtesy, his indignation would pour out in an ever quickening flow of observations meeting and demolishing the argument of counsel. Proverbially, there have always been two kinds of Judges, the silent Judge and the talking Judge. Sulaiman was not a silent Judge. But then it has been observed that a quick and restless intelligence under the pressure of a powerful mind often finds it difficult to restrain itself. It is unable always to obey that constraint which at times accompanies, and sometimes disguises, a less energetic temperament.

In 1929 he was knighted by the King-Emperor. He acted as Chief Justice in the absence of Sir Grimwood Mears, and thereafter served as a member of the Peshawar Enquiry Committee constituted for enquiring into the riots in Peshawar in 1930.

Upon the retirement of Sir Grimwood Mears as Chief Justice, Sir Shah Sulaiman was appointed to that supreme office on March 16, 1932. It was a momentous event and one of profound significance for the Province.

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It was an event which aroused the pride of Indians and ranked close to the powerful emotion which was already sweeping the country in the wake of the movement for political independence. He was not the first Indian to occupy the office of Chief Justice—Sir Shadi Lal had already preceded him in that respect at Lahore—but his appointment evidenced the conviction in the British mind that the Indian race could be confided with the helm of judicial administration.

Shortly after assuming office as Chief Justice, he was appointed to serve on the Capitation Rates Tribunal in England, presided over by Sir Robert Garran of Australia, with Lords Dunedin and Tomlin and Sir Shadi Lal, as his colleagues. Difficult problems of military finance arose before the Tribunal, and Sir Shah Sulaiman aroused the respect of the Bar in England for the facility with which he tackled them.

As Chief Justice of this Court, he enjoyed the confidence and co-operation of his colleagues in the fullest measure. With his inherent qualities and the reputation which he had already acquired as a member of the Court he was the natural leader of the team of judicial talent which adorned the Bench.

A word may be said here of the dispatch with which he executed the business of the day. One remarkable instance is afforded by the hearing and decision of the appeal in what is popularly known as the Meerut Conspiracy Case.¹ The trial of the case had taken as long as two years before the Sessions Judge. The record contained voluminous evidence. When the appeal in the High Court came on for hearing, it was generally expected that even at a modest estimate a few weeks would be occupied. But before Sir Shah Sulaiman and Mr. Justice Young, the hearing lasted merely eight days, and immediately upon the conclusion of counsel's submissions, Sir Shah Sulaiman dictated judgment in open Court,

¹ 1933 A.L.J.R. 799.

It is difficult within the limitations of a pen portrait to trace in any detail Sir Shah Sulaiman's contributions to the development of the law in this Court. But reference may be made to some later Full Bench decisions in which he participated. With his capacious intellect and versatility, he was at home with equal facility in every branch of the law. It could be a matter arising out of the Companies Act, as in *Shiam Lal J. Dewan versus Official Liquidators of the U. P. Oil Mills Co. Limited (in liquidation)*¹ where he held that a winding-up order does not give a fresh start to a liquidator, contributory or creditor for the purposes of limitation and that the period of limitation would depend upon the relief sought as if the proceeding were a suit seeking that relief on behalf of the company, or complicated questions of the Hindu law, as in *Chhotey Lal versus Ganpat Rai*² where he discussed at considerable length the entire law relating to the pious obligation of a Hindu son to discharge his deceased father's debts, in *Ram Lal versus Chiranjil Lal*³ where he expressed the opinion that the circumstance that money was borrowed by the manager for the purposes of a new business was not sufficient reason for the alienation of joint family property, and that justification for such alienation could be found only if the business was the mainstay of the family and that there was pressure of necessity for continuing it, and in *Rajpali Kunwar versus Sarju Rai*⁴ which required consideration of the Hindu Law of Succession as modified by the Hindu Law of Inheritance (Amendment) Act, 1929. In *Genda Lal versus Hazari Lal*,⁵ he detailed the principles relating to the application of the principle of *res judicata* to execution proceedings and thereby removed much controversy that had existed in the Court. The law of transfer of property was the subject of a number

¹ 1933 A.L.J.R. 1203.

² 1934 A.L.J.R. 483.

³ 1935 A.L.J.R. 177.

⁴ 1936 A.L.J.R. 659.

⁵ 1935 A.L.J.R. 1189.

of important decisions in which he participated, one of them being *Alam Ali versus Beni Charan*,¹ where the rights of a third mortgagee upon a suit for sale by the second mortgagee were pronounced upon. The law in India relating to receivers was considered in *Ram Swarup versus Anandi Lal*, where the question was whether under the provisions of the Code of Civil Procedure, it was competent for the Court to appoint a receiver of the property mortgaged pending the decision of an appeal against a mortgage decree, and Sir Shah Sulaiman reviewed the case-law which had issued from the different High Courts in India and compared the law in India with that followed in England, Ireland and America. What should be the fair ratio of distribution of compensation awarded for agricultural land, acquired by the Government under the Land Acquisition Act, as between the landlord and the occupancy tenants was considered by him in *Shiam Lal versus Collector of Agra*.² The question was a difficult one and called for a careful weighing of the respective rights of the landlord and the occupancy tenants almost to the point of mathematical precision, and the entire bundle of rights of each claimant was subjected to the minutest analysis. The law relating to pre-emption in the United Provinces owes a fair measure of its development to the several decisions rendered by him. Criminal law received at his hands the same intensive research which he devoted to the civil law. His mastery over its principles was undoubted.

With a reputation whose brilliance was acknowledged throughout the land, it was no surprise when in May, 1937, it was announced that Sir Shah Sulaiman had been appointed a Judge of the Federal Court of India. The new Court was constituted under the Government of India Act, 1935 and for the first time under British rule a focal point was created within

¹ 1935 A.L.J.R. 1294.

² 1936 A.L.J.R. 605.

the country to which important and grave questions of law proceeded from the High Courts and which, moreover, was vested with original jurisdiction in matters of constitutional importance in disputes between the Central Government and a Province or between one Province and another. When the news of his appointment was announced, there was great rejoicing in this Court, and in a reference before a Full Court shortly after the announcement tributes were paid and congratulations showered upon him. When the time approached for him to leave for Delhi, there was a fond but sad farewell. Sir Shah Sulaiman assumed office as Judge of the Federal Court on October 1, 1937.

Almost from the very beginning of the history of the Federal Court, and indeed in the very first case, *In re C. P. Motor Spirit Act*,¹ his ability as a jurist came clearly to the fore. It was a reference made by the Governor-General to the Federal Court for opinion in a dispute between the Government of India and the Government of the Central Provinces and Berar respecting the competence of the Provincial Legislature to impose retail sales tax on motor spirit and lubricants. Characteristic of his keen enquiring mind, Sir Shah Sulaiman sought out the distinction between customs and excise duties on the one hand and retail sales tax on the other. He rested the distinction between direct and indirect taxation on concepts ordinarily familiar only to the economist and the student of public finance and appropriately set it in the historical context to which it belonged. The opinion which he delivered has been described by that eminent British lawyer, J. H. Morgan, K. C. in the following terms :

“Now I have just been reading the judgments of the Federal Court at Delhi in that important case. One of those judgments stands out conspicuous and pre-eminent and may well prove to be *locus classicus* of the law on the subject. It is a judgment worthy of the highest

¹ A.I.R. 1939 F.C. 1.

traditions of the House of Lords as an Appellate Tribunal and of the Privy Council itself. I refer to the brilliant judgment of Mr. Justice Sulaiman. In depth of thought, in breadth of view, in its powers alike of analysis and of synthesis, in grace of style and felicity of expression it is one of the most masterly judgments that I have ever had the good fortune to read. Everyone in India interested in future development of the Constitution should study it."

In *United Provinces versus Governor-General-in-Council*¹ Sir Shah Sulaiman resolved the doubt whether the scope of the administration of justice extended to cantonments even as it did to other areas, and repelled the contention that the cantonments were outside the jurisdiction of the Provinces in the matter of legislation regarding courts of criminal jurisdiction. A decision of wide importance was rendered in *The United Provinces versus Atiqa Begum*,² where the Federal Court was called upon to examine whether the Legislatures in India were entitled to enact legislation having retrospective effect. Sir Shah Sulaiman expressed the opinion that they did. Upon another interesting question raised in the case, he recognised the right of the Government to prefer an appeal even though no decree had been made against it, provided it had been impleaded as a party to the proceeding before the High Court and was interested in the constitutional question arising in the case. The doctrine of the "unoccupied field" in its application to the Legislative Lists in the Government of India Act, 1935, was considered by him and the principles flowing from that doctrine were laid down in *Subrahmanyam Chettiar versus Muttuswami Goundan*.³ His judgments bear the stamp of his genius and scholarship and have earned him a place among such immortals as Sir Barnes Peacock, Sir Muthusami Iyer,

¹ A.I.R. 1939 F.C. 1.

² 1940 F.C.R. 110.

³ 1940 F.C.R. 188.

Sir Bhasyam Iyengar, Mr. Justice Mahmud, Sir Pramoda Charan Banerji, Mr. Justice Dwarka Nath Mitter and Mr. Justice Ranade.

It is not easy for a busy practising lawyer to find time for activities unconnected with the profession of law. Those who have succeeded in making effective contribution in other fields did so either when they were practically briefless, as did Buckley who wrote his treatise on the Company Law when he had only recently been inducted into the profession, or had reached that prime of their professional career when the flow of work was assured and the years of struggle and uncertainty behind. Sir Shah Sulaiman, despite his heavy involvement with the legal profession, continued to indulge in his passion for mathematics and physical research in astronomy. It was a passion which, after the law, commanded his undeviating allegiance. With his elevation to the Bench, he gave himself to it with increased devotion. Always a scientist by temperament, it was his delight to retire in the evening to that part of his residence where, surrounded by scientific tomes and mechanical weights and other devices, he applied himself to the discovery of the laws of the universe. Those laws were still imperfectly understood. Over a long period the Law of Gravitation propounded by Newton had wielded undisputed sway, and the student of science employed it in his attempt to explain the motions of the solar planets and their satellites. The theory was, however, demonstrated to be inexact and its soundness was disputed by Einstein, who propounded his Theory of Relativity. Einstein's theory attempted to relate space and time in a union described as the "space-time continuum". The theory created a revolution among the savants of science. Sir Shah Sulaiman, however, could not bring himself to accept Einstein's theory in all its implications. He developed a distinct theory, which assumed that radiation flowed from the surface of bodies in a motion which was the resultant of the forward velocity of light and the rotational velocity of the electron. This theory, while departing from Newton's Law of Gravitation, sought also to explain the divergences noticed

upon the application of Einstein's theory. It won considerable distinction in India and abroad and eminent scientists, who included Dr. Harlow Shapley of Harvard, a powerful figure in the world of applied mathematics, spoke in terms of the highest appreciation of its mathematical results. The path of scientific research is long and difficult, often attended by frustration and apparent failure. But the driving force of Sir Shah Sulaiman's intellectual vigour drove all obstructions from his path. And how formidable were the obstructions in those now distant days of colonial rule is not easy to realise in an age-grown accustomed to the availability of vast funds and facilities in a country anxious to catch up with the scientific achievements of the outside world.

A man of law and a man of science, he was fascinated by the moods and rhythms of life. And Sir Shah Sulaiman discovered them in literature. His refined and cultured mind was attracted to Persian and Urdu poetry, and he frequently presided over literary gatherings where such compositions were recited. It was not the fascination of the mere dilettante. His interest reflected the philosophical urge of a man in love with human values.

His other love, Education, influenced him from his earliest years in extending his assistance to several educational institutions. He was a member of the Court of the Aligarh University and of the Allahabad University for several years. He participated in the deliberations of the Executive Council of the Allahabad University. In 1928, he presided over the All-India Mahommedan Educational Conference at Ajmer, and later over the All-India Adult Educational Conference at Delhi. The Aligarh University especially is heavily indebted to him. For it was there that as Vice-Chancellor he effected a reorganisation of its academic and administrative life which put new vigour into its working. His advice was frequently sought, and freely given, in matters relating to finance and scientific research. Almost to the end of his life he continued to visit the University regularly during the week-end.

Sir Shah Sulaiman commanded attention wherever he was. Endowed with a distinguished presence, nobility was writ on his brow and good breeding in every gesture; his thoughtful mien and calm, unruffled temperament emphasised a natural dignity. A thinker and a scholar, with a mind sensitive and scintillating, he moved through life wearing distinction with unassumed ease.

He had many years yet of the normal span of life before him. But Destiny, who had from his birth chosen him for her own, decided otherwise. On March 12, 1941, at the zenith of his career and in the full possession of his powers, he was stricken with a cerebral haemorrhage and within a few hours he passed away. The numerous family of his friends and admirers mourned the departure of a great man. His death was a profound loss, and not only to those who knew him. The unfulfilled years of scholarship in law and research in science were bereaved. To this Court the intelligence of his death came as a severe blow. Here, he had spent the longest and most eventful years of his life and now, apart from the legal wisdom enshrined in his judgments, there was only the memory of the effulgent brilliance of his presence.

As one passes through the Marble Hall, outside the door of the Chief Justice's Court Room the eye falls on a simple marble tablet set in the wall and inscribed with the legend:

IN AFFECTIONATE MEMORY
OF
SIR SHAH MOHAMMAD SULAIMAN, KT.
M.A., LL.D., BARRISTER-AT-LAW
PUISNE JUDGE 1923
CHIEF JUSTICE 1932
JUDGE OF THE FEDERAL COURT 1937
DIED MARCH 12, 1941
THE JUDGES AND MEMBERS OF THE BAR
OF THIS HIGH COURT
HAVE PLACED THIS TABLET.

He has passed into history, and the glory that was the man now belongs to the ages.

Some English Judges whom I Admired

By

SRI S. P. SINHA

Senior Advocate, Supreme Court and Ex-Judge, High Court, Allahabad

THE struggle for freedom, miscalled the Mutiny of 1857, failed for lack of unity of purpose and unity of command, for the utter lack of patriotism displayed by the Indian princes and the whole of the Punjab. Lord Canning described the States as breakwaters. How shall we describe the Punjab? But, it was enough to shake the Empire to its very foundations. The Crown realised its responsibility and assumed direct control of the administration. England felt that the memories of Havlock, Hudson, Neill, Nicholson and so many others should be obliterated. They had, by their misdeeds, shamed even Nero and Caligula. She also felt that the policy of the mailed fist initiated by Warren Hastings and pursued by Wellesley, Moira and Dalhousie,

the author of the infamous doctrine of lapse, should be replaced by a policy of the Velvet glove.

“Old Order Changeth Yielding Place to New.”

Canning himself was the first in the new order. Barring one or two exceptions, like Lytton and Curzon, the line was unbroken. England was anxious that the best products of Oxford and Cambridge should be sent to this country; men to whom:

“India was not merely a land of regrets and rupees, but a land of duty written in five letters instead of in four.”

SIR ROBERT AIKMAN

Robert Smith Aikman was one such product. He arrived in India on October 22, 1867 and was posted to Agra as Assistant Magistrate and Collector. Promotions those days were slow and followed a strict test of experience and merit. It was only on March 20, 1886, that this young man of unusual merit was first appointed as District and Sessions Judge, Aligarh, which was then a great educational centre. The M. A. O. College, Aligarh was presided over by Principal Beck, a young man of about thirty-two, endowed with talents of the highest order. It is also remarkable that the constitution of the college had been drafted by a young barrister of twenty-two, Syed Mahmood, later the famous Justice Mahmood.

He served as a District and Sessions Judge for fourteen years, at several places, but all in the Agra Division, till he officiated for Mr. Justice Mahmood in November, 1892. On the permanent appointment of Sir P. C. Banerji, he had to revert as District and Sessions Judge, Bareilly, but after a few weeks, he joined the High Court permanently in place of Mr. Justice Tyrrell.

In the High Court he was an outstanding success. That eminent criminal lawyer, with an equal command of law and letters, the author of India under the British Crown, has described Justice Aikman in these terms :

“The patience that he displayed on the Bench was remarkable and he had the rare faculty of cutting short long winded arguments by some short observations whose quiet humour was appreciated”.

He was equally at home both on the Criminal and the Civil sides. Mr. Manmohan Ghosh, the eminent Calcutta Barrister, appeared before him in the well-known case of Hanumant Prasad of Azamgarh. He formed a very high opinion of him and said that it was a pleasure to appear before such “an intelligent, painstaking and courteous Judge”. His judgment in *Queen Empress versus Mannu*, I. L. R. 19 All. 390 (F. B.), in which he slightly differed, in a very material particular, from Sir John Edge, is a measure of his understanding and sympathy. He says at p. 417 :

“It requires no argument to show that if a witness who is giving evidence against an accused person is proved to have made statements *differing materially* from the evidence he gives in Court, the value of the testimony is seriously impaired, for it is clear that either he or his memory is not to be trusted.” The italics are mine.

The number of cases decided by him must be legion, but I propose to notice one case, which in one form or another has, over the years, been noticed by all the Courts in India, viz. *Balkishan Das versus Legge* (I.L.R. 19 All. 434).

The question still arises whether a certain transaction is a mortgage by conditional sale, or a sale with a clause for repurchase. The parties were represented by all that was best at Allahabad and Lucknow. Mr. Conlan, Mr. Colvin, Mr. D. N. Banerji and Mr. Madho Prasad appeared for the

appellants; Mr. De Gruyther, Mr. Chamiar and Mr. G. P. Boys for the respondents. At the end of the argument, which lasted for several days before Mr. Justice Banerji and Mr. Justice Aikman, the leader of the Lucknow Bar paid a high compliment to the members of the Bench. The Privy Council affirmed the decision—27 I.A. 58. Mr. De Gruyther himself won fresh laurels in the Privy Council.

Mr. Justice Aikman was singularly free from racial prejudice. The case of Emperor *versus* Hoffman bears ample testimony to it. Hoffman, a European was charged with wrongful confinement of a Marwari lady at the Kanpur Railway Station. The Jury returned a verdict of not guilty. His Lordship refused to accept the verdict and openly said he dissented from it.

It is not surprising that the Bar, on his retirement in 1909, gave him a farewell which, for its warmth and sincerity, has hardly been equalled, never surpassed. Mr. C. C. Dillon and Mr. J. N. Chaudhri paid him rich tributes. The compliment paid by Mr. Chaudhri himself a great master of English language, was so unique that a few words will bear repetition :

“It is our duty to express our sense not only of your conspicuous ability, learning, patience and assiduity . . . There never was a Judge who was more deeply imbued with a more earnest desire to do justice between man and man and who better succeeded in inspiring confidence in the public mind”.

The Bar presented him a silver casket on which were inscribed the following Urdu lines composed by the famous poet Akbar, who had once served under Justice Aikman as a Small Cause Court Judge.

ترے عدل و انصاف نے ایکہن

بہت من ہیں جیتے نہ صرف ایکہن

“Thy justice, Aikman has won—Many a heart, not one”.

Presiding, in the unavoidable absence, owing to sudden illness of the Viceroy, Lord Lansdowne, over the memorial meeting to mourn the death of Theodore Beck, Sir Arthur Strachey referred to the deceased in these terms :

“He was one of the few Englishmen whom England sent to the country as messengers of goodwill, to interpret the high and noble purpose of the empire”.

I used to hear many anecdotes about him from my father and his friends. I shall mention only one, because it represents the highest water-mark of an unruffled temper and almost divine patience and dignity.

There was a barrister who did not exercise much discretion or judgment in the selection of appeals he filed. He stood up to argue a second appeal and, for want of any point worth arguing, he argued :

“My Lord, the judgment of the Court is unintelligible”.

Justice Aikman : “No, the judgment is quite intelligent to me”.

Counsel : “Your Lordship must be an extraordinary man”.

Judge : “No , I am a very ordinary man”.

Counsel : “No my Lord, you must be a very extraordinary man”.

After that, the Judge kept quiet and the arguments continued uninterrupted.

I know of no parallel to such nobility of character. Sir Robert Aikman belonged to the class of I. C. S. officers, who lived for the people, moved amongst the people and had their being with the people of this country. He has left a memory which is still treasured by us. It is of such man that the poet has said :

“A gentleman I'll be sworn thou art,
Thy form, thy face, actions, tongue and spirit
Do give thee five-fold blazon”.

SIR JOHN STANLEY

Sir John Stanley came to India as a Puisne Judge of the Calcutta High Court in 1898 ; and on the death of Sir Arthur Strachey he was appointed Chief Justice of the Allahabad High Court. He assumed charge on August 17, 1901. The Calcutta Weekly Notes, then at its zenith, wrote of him in very complimentary terms and he brought to this Court a high reputation for ability and industry.

Stanleys are well-known names in England. Members of his family held high offices under the Crown, at home and in different parts of the Empire. Sir John Stanley throughout his career as Chief Justice maintained the high traditions of his family.

His judgments show a thorough grasp of legal principles, wide experience, the saving grace of common-sense and a comprehensive view of human life. He was the master of a style simple, elegant and with an easy flow of words.

Almost throughout his tenure, His Lordship sat on the Civil side, in heavy first appeals. He spared neither himself nor others; and quite naturally he made a substantial contribution to the case-law on a variety of subjects. I shall notice one or two of his decisions which have left a permanent impress upon the case-law.

The terms—‘A Hindu son’, ‘vested right in the family property’ and ‘the Hindu coparcenary’—sounded as anachronism to some of us even then. But, the Hindu son found in His Lordship a genuine friend and a warm advocate.

Sir John Stanley’s intelligence and shrewd common-sense enabled him to get at the truth. In a case, which was a *locus classicus*, Maharaj Singh *versus* Raja Balwant Singh (1906 A. L. J. R. 274), he delivered a remarkable judgment. The suit was brought by the transferee of a mortgagee.

The mortgage in suit was executed in lieu of earlier debts incurred by the father. His Lordship's judgment on the question of burden of proof is truly remarkable. Says he—

“(a) No necessity for the expenditure of the moneys, which the income of the estate could not satisfy, is suggested, other than that, which might arise out of a dissolute and extravagant mode of life.

(b) Now that a large part of the money borrowed by Raja Shankar Singh, was borrowed for immoral purposes, there can be no doubt. His income was more than ample to meet his ordinary requirements, and in addition to that, he had the large accumulations amassed by his father.

(c) Experience tells us that his licentious mode of life was not and could not be concealed from his neighbours. It was no doubt the common talk of the *bazar*. No intending lender could fail to have learnt of it, if he had made any enquiry whatever.

(d) The facility with which Hindu fathers can obtain loans from money-lenders has proved disastrous to many respectable and well-to-do families in these provinces”.

This reads like a page from some old text-book writer who had entered into the spirit of the Hindu law. It is not surprising that His Lordship, as the scion of a distinguished family, held this view. It reminds me of a few lines in one of Shakespear's plays :

*“My Lord of Norfolk ! Since you are truly noble
As you respect the estate of the Despised nobility.”*

His Lordship had a high sense of morality and we would not grant the husband a decree for restitution of conjugal rights if he had made a wanton and unfounded attack on the character of the wife.

To quote His Lordships :

“We find him in the plaint itself heaping the vilest insults upon her. He charges her with immorality and adultery. In view of her parentage, position and fortune the charge, if untrue, is sheer cruelty”.
(1907) 4 A.L.J. R. 60, at p. 65.

Like Sir Robert Aikman, Sir John Stanley was also singularly free from racial prejudice. A case from Jhansi was typical of its kind and illustrates His Lordship's exalted character. One Rahim Baksh, a building contractor, did some work for the Government and had not been paid his dues despite repeated demands. One day, with more zeal than discretion, he approached the Engineer, Mr. Rice, and pressed his demand. This was too much for Mr. Rice. He not only scolded the contractor, but freely used his cane. Rahim Baksh brought an action for damages on account of the beating. Among the pleas raised by the Engineer in his defence was that what was done had been done in the discharge of his duty. The suit was dismissed by the Courts below. The second appeal came up for hearing before Sir John Stanley. His Lordship summoned Mr. Rice and plainly told him “It was no part of your duty to use your cane and beat the man”. He acted as Chief Justice for ten years and, very naturally, men's memories were full of his acts of kindness. Sir John Stanley retired in 1911, but he was long remembered for his many acts of kindness. We owe the present building of the High Court mainly to his efforts. He died not long after.

“But to live in hearts you leave behind, Is not to die”.

SIR THEODORE PIGGOTT

Mr. Justice Piggott came to India in 1888. He was born at Padua, in Italy, on October 26, 1867 and was educated, first at Kingswood School,

Bath, and then at Christ Church, Oxford, from where he took his degree with distinction in 1888. He joined the service on August 28, 1888, as Assistant Commissioner, Allahabad. From here he went to Jhansi in the same capacity. In April, 1890, he was made an Assistant Magistrate and Collector and worked in that capacity in Mirzapur, Ghazipur, Ballia, Bulandshahr and Budaun. He was there made a Joint Magistrate in November, 1893. After six years of service on the executive side, he went to Aligarh as Additional Judge. The M. A. O. College, Aligarh, at that time, in the words of Sir Tej Bahadur Sapru, "was particularly lucky in the brilliant combination of its professors. Theodore Beck was the Principal of the College and there were men like Sir Theodore Morrison, Professor Wallace, Theodore Arnold and the distinguished Shakesperean, Professor Raleigh". Among the students was that prince of scholars, Satish Chandra Banerji, who had few equals in the country, none to surpass him. The subject of this sketch was a man of a scholarly disposition. I have no doubt the advent of the fourth Theodore must have enriched the intellectual life of Aligarh. After that, Mr. Justice Piggott, barring a short interval, always worked on the judicial side at Budaun, Saharanpur, Moradabad and Gonda.

He had made his mark as one of the best Judges in the Province and was appointed officiating Judicial Commissioner, Lucknow, in 1908. He was confirmed in 1909. He officiated in the High Court in 1910, 1911 and 1912. He came here permanently in place of Sir Harry Griffin in June, 1914 and retired in April, 1925.

Once I went to the house of Sir Theodore Piggott. As soon as I reached there, I was ushered to the drawing room where he was sitting with a few Indian *raises*. He was talking to them in very good and fluent Urdu. He very warmly shook hands with me. One of the persons present put to

His Lordship, what was a matter of common knowledge, if it was a fact that he had superseded some men in his service. He was modest almost to a fault and very nearly blushed when he said "I do not know why, but the Government was somehow partial to me".

His Lordship was the master of an inimitable style, which was both scholarly and homely. It had, sometimes, a romantic touch. Of these, the best illustration is the case of Budha Singh *versus* Laltu Singh (I. L. R. 34 Allahabad 663), when, sitting with Sir P. C. Banerji, he had to decide one of the subtlest and most difficult questions under the Hindu law. Who under the Banaras School of Hindu Law, had a preferential claim?—the great grandson of the grand-father, or the grandson of the great grand-father? The answer depended upon the interpretation of the words *Putra* and *Santana* in the Mitakshara. It was a most perplexing problem. Eminent authors, ancient and modern, were arrayed against each other. Visheshwar Bhatt, the author of *Subodhini* and *Madan Parijat* among ancient commentators, and Mandlik and Golap Chandra Sarkar among modern writers, on the one side, and Aparaka and Manda Pandit among the ancients and Harington, Jolly, Mayne and Sarbadhikari among the modern, on the other. The weight of authority was evenly balanced and the Judge's task was most difficult. In this, the grand-father's great grandson won.

It will serve no useful purpose to notice any further Mr. Justice Piggott's contribution to the case-law. I would like to say only this that in criminal cases he took a very liberal view. In one case Surendra Nath Mukherji *versus* Emperor (1918 A. L. J. R. 478), he went up to almost unattainable heights and gave a judgment which, for its breadth of view and literary elegance, has seldom been excelled.

He had married the daughter of Mr. Walter Lyall, the elder brother of Sir James Lyall, for sometime Lieutenant-Governor of Punjab, and

also Sir Alfred Lyall, the scholar administrator whose book on Warren Hastings is so well-known.

Mr. Justice Piggott never said an unkind word from the Bench. He not only knew his English law very well but was equally well-versed in the Indian law. It was a pleasure to hear his observations when a Senior Counsel argued an important question of law. There was nothing he did not know.

He was a great Judge, what is more, a kindly gentleman whom some of us still remember.



Sir Pramoda Charan Banerjee

By

SRI AMITAV BANERJI

Advocate, High Court, Allahabad

HE sat on the Bench of this Court for nearly thirty years and left a mark which has been an inspiration not only to those who followed him but to the entire judicial world. He was truly one of the great Judges that have adorned the Bench of any High Court in India. No other Indian Judge sat for a longer period on the Bench and he made a very solid contribution to the elucidation of our laws, particularly the law on Mortgages and the Hindu Law. Not only the Judges of his generation and their successors in this Court honoured his opinions but also the Judges of other Courts looked upon his judgments with the utmost respect.

Sir Pramoda Charan was born on the 10th of April, 1848. He was educated at the Presidency College at Calcutta and took the B. A. Degree with distinction. He obtained the 'Ryan Scholarship' and passed the Bachelor of Laws Examination of the Calcutta University in 1869.

He was enrolled as a Vakil of the Calcutta High Court in the same year but shifted to Allahabad and commenced his practice in the High Court in November, 1870. His contemporaries at the Bar were Munshi Hanuman

Prasad, Babu Pearey Mohan Banerji, Pandit Ajudhiyanath and Mr. Charles Dillon. Two years later he was offered an appointment as a Munsif of the 2nd Grade which he accepted much to the regret of his colleagues at the Bar. While still a Munsif he was appointed Deputy Registrar of the High Court. His tenure of office as an officer of this Court proved an extremely successful one. Eight years later in 1880 he superseded 19 senior Munsifs and was appointed a Judge of the Small Causes Court at Agra which post till then had been held by Europeans only. He was the first Indian Member of the Provincial Judicial Service to be appointed to responsible office. In 1886, he was transferred to Allahabad and for seven years was the Judge, Small Causes Court, Allahabad.

In 1893 he was appointed an additional Judge of the Chief Court of Oudh at Lucknow. Four months later, he was elevated to the Bench of the High Court at Allahabad on the 20th of December, 1893. He retired on the 1st of August, 1923, and during this memorable career he worked devotedly on the Bench and exhibited unruffled patience, unvarying courtesy and an unfailing desire to do justice. His reputation as a Judge of outstanding ability, legal acumen and scholarship stands high and the pages of the law reports enshrine his luminous expositions on many an intricate point of law.

His memorable minority judgment in the Full Bench case of Bhagwan Singh *versus* Bhagwansingh (reported in Indian Law Reports 17 Allahabad, page 294) on the question of adoption bore a stamp of industry and research into the intricacies of the Hindu Law. Although the above reported case is more often cited as an example of the great mastery on questions of Hindu Law by Chief Justice Sir John Edge, whose opinion was the leading majority judgment in that Full Bench case, the Privy Council by its decision (reported in Indian Law Reports 21 Allahabad 412), reversed the majority opinion and upheld the view taken by Mr. Justice Banerji. He was rightly recognised as an authority on Hindu Law throughout India.

On the law of Mortgage his opinions were read and followed by Courts and Counsel alike throughout the country. His opinion in the reported case of *Balkishan versus Legge*, (I. L. R. 19 Allahabad 434) was an example of lucid exposition of the law on Mortgage by conditional sale, commonly known as "*bai bil wafa*" in this State. The Privy Council upheld the decision on appeal. His pronouncements on the law of the Transfer of Property were significant and were major contributions to the case-law on the subject. Judges of the Privy Council respected his opinions and his judgments were seldom overruled or set aside.

He was a prodigious and indefatigable worker. He studied each record with great care. He would not hesitate to pierce the armour of any counsel who dared advance an untenable argument or one not based on record, yet, he was also so considerate, gentle and courteous that the inexperienced and the junior member of the Bar was promptly set at ease in his presence. Outside the Court there was hardly an occasion when he would not offer a kind word of encouragement to a young lawyer.

He had a faculty of stripping away non-essentials and laying bare the heart of a controversy. He exposed fallacies in arguments relentlessly but with good humour. He had an abundance of patience, tolerance and understanding. Those were not common virtues but they were his in uncommon measure. A man of exemplary character, he possessed great human understanding and an appreciation of our national heritage. He was full of worldly wisdom, humility and a quiet natural dignity which inspired respect and admiration.

His memory was phenomenal and amazing. He seldom took any notes while listening to an argument and yet, he was able to reproduce almost the exact words uttered by the Counsel. No point of law or any material fact escaped his memory and were found in proper sequence in his judgments. He remembered every decision of his, including all the complex facts therein and those of the Privy Council and his knowledge of the case-law was

profound. In later years when his eye-sight was very poor he did not encounter any serious problem for whatever was read or spoken was duly etched in his memory—which remained as sharp as ever.

His capacity for hard and sustained work, his thorough grasp of the principles of law gave firmness to the expressions in his judgments. A sound knowledge of the judicial and administrative procedure and the laws of the State, acquired through the working from the lowest to the highest office in the judiciary gave him an advantage which was possessed by very few of his colleagues on the Bench and fewer still at the Bar. Wherever he worked and in whatever capacity, he distinguished himself by his great talents, ability, impartiality and fearless discharge of his duties.

A man of his learning and knowledge was not very common in those days. His taste was confined not merely to the reading of legal literature. He was a widely read man. His palatial house (now the Women's College in the University) which housed a splendid library was the meeting place of the intellect of the town. Sir Pramoda Charan was not merely a great Judge but a reputed educationist as well. He devoted considerable time to the cause of education. He was a member of the Faculty of Law of the University of Allahabad and took the keenest interest in the progress and the development of the University. He was also a distinguished Vice-Chancellor of the University for several years. His efforts for the spread of higher education amongst his countrymen was a notable contribution made by him in the field of social service. The University of Allahabad honoured itself by conferring on him the degree of Doctor of Laws, *honoris causa*, in 1919.

In private life Sir Pramoda Charan enjoyed the highest respect for his sublime character and personal charm of manners. Those who knew him personally remembered his modesty and his courtesy. He was charitable and kind, but correct in his approach to men and matters. No one could ever forget a visit to his house—his hospitality and cordiality

were renowned. He was a man of taste and his collections were an object of envy to the visitors. His son Lalit Mohan Banerji followed in the brilliant footsteps of his distinguished father and was raised to the Bench in 1926.

On his death at the age of 82, Sir Grimwood Mears, the then Chief Justice, said of him : "At times, on one's journey through life, one meets men so abundantly dowered with qualities that lift them so much above their fellow-men, that there seems to be almost an element of unfairness in so lavish a concentration of gifts. Sir Pramoda Charan Banerjee was one of those rare men. He had as a foundation abundant vitality, without which so sustained an achievement as his, spread over, as one might say, two life times, would have been impossible. He possessed a clear and powerful brain and being by temperament industrious, after years of hard work became a profound lawyer. His higher gifts of character and kindliness of disposition drew all of us to him".

Sir Tej Bahadur Sapru spoke of him as "one of those who added distinctly to our status both as an Indian and as a lawyer and to our intellectual and moral qualities. The legal profession could not have asked for a better representative on the Bench and the Judicial Service might well take pride that it could produce a man of his talent and of his calibre".

Few men have been so well qualified by intellect, experience and personality to meet the exacting responsibilities of a Judge of a High Court in India. Although he rose from humble beginnings to the highest office in the Judiciary, for any Indian then, he never lost his understanding of people—that commonsense touch and good judgment so essential in one who attains such heights.

Generations of students and professors, lawyers and Judges studied and analysed his judgments and acknowledged his intellectual eminence. The name, the fame and the reputation of this Court was built up by men of the calibre of Sir Pramoda Charan who spared no pains to prove that

intellectually and morally his countrymen were fit to discharge any duty cast on them with impartiality, with honesty and with ability. They were the fore-runners of men who clamoured for complete independence from foreign domination and as such they were rightly the leaders of the nation. In those days when Sir Pramoda Charan lived and worked the society honoured men of intellect and integrity and nothing was honoured more. It was the country's good fortune that brought a man of such character and integrity into public life. The contributions of Sir Pramoda Charan were manifold and significant for the well-being of his countrymen and he will be remembered as long as the present judicial system and the Allahabad High Court exist.



Sir Bisheshwar Nath Srivastava

By

LATE SRI MAHESHWARI DAYAL

Retired District Judge

IN the annals of the Chief Court of Oudh Sir Bisheshwar Nath stands assured of a place not less distinguished than any of his contemporaries or those who came there in the succeeding generation. His career is a story of ever accumulating success without its share of vicissitudes.

Sir Bisheshwar Nath was born in the year 1881 at Bilhaur (in the district of Kanpur), in a very respectable family. His father, the late Munshi Badri Nath, was a Deputy Collector, and in those days it was an office of distinction, for that was the highest executive office an Indian could normally aspire to.

Little is known of his early life, and, besides this, its account would deserve inclusion only in an exhaustive biographical volume. It is sufficient to mention that he was from the outset an intellectual prodigy. Though he does not seem to have had a meteoric academic career, yet he performed the wonderful and almost incredible feat of passing the Entrance Examination

at the age of 13 and taking the B. A. Degree at the age of 17. In the 19th century it was indeed an achievement of dazzling brilliance more marvellous than topping the list of successful candidates of securing honours. Before he was 22, he bid *adieu* to the University, after having sucked out of it all that it had to yield, and set up as a lawyer in the year 1903.

His career at the Bar was from the beginning blessed with the smiles of fortune. By 1919, when he was dubbed an Advocate by the Oudh Judicial Commissioner's Court, which was the humbler and plainer form of the Chief Court, he had already become a doyen of the Bar of that Court. In that antediluvian age, Advocateship was the blue ribbon of the Indian Bar and only leading lawyers of exceptional merit were favoured with that distinction. Soon he rose to the pinnacle of success and fame. And why should it not have been so? He had all the graces, virtues, and qualifications that are the warp and woof of a great and brilliant lawyer—a fine and imposing presence; very sweet, persuasive and winsome manners and address; facile, lucid and impressive expression; cogent reasoning; intelligent and masterful marshalling and exposition of facts; profound and extensive knowledge of legal principles, and precedents; a robust common-sense; indefatigable energy and inordinate capacity for hard work; thorough dependability and trustworthiness. He enjoyed the respect and esteem of both the Bench and the Bar, as well as the litigant public.

It must be said to his credit that he did not stumble on success, but earned it as a conquest by a determined use of intellectual gifts with which nature had endowed him in no niggardly measure. He was a practitioner mainly on the civil side, and had a special mastery of the Taluqdari law. There was hardly an important case in the Province of Oudh in which his professional services were not requisitioned. He had an extremely busy time and money came to him in abundance.

His career took its first somersault in 1928, when he was temporarily elevated to the Chief Court Bench. It did not come as a surprise; for

he had become the undisputed master of the field and the foremost leader of the Bar. He gave a most creditable account of himself; and it was discovered that he was not only a great Advocate but a great Judge too. A great Advocate is not always a great Judge or *vice versa*, and combination of the two is a rare phenomenon. This small beginning consummated the following year, when he was made a permanent puisne Judge. He quitted the profession amidst mingled joy and regret of the Bar and his clientele. It must have been a moment of tense excitement and anxiety for him; for, though the exalted position promised him abundance of glory and honour, he had to pay a heavy price for it. He was, not however, slow in making his choice. He preferred to be a dispenser of justice.

His elevation was acclaimed universally as a valuable acquisition to the Chief Court Bench. People confidently looked forward to a distinguished judicial career culminating in the top-most rung of the ladder. As time rolled on, the expectation matured into certainty. But, when, on Sir Syed Wazir Hasan's retirement in 1934, the occasion for his permanent appointment as Chief Judge approached, these hopes were, for certain reasons which were not attributable to him, clouded over; and it was feared that an Indian might not be appointed again to that high office in Oudh. And this, in spite of the fact that Mr. Justice Bisheshwar Nath had established an abiding reputation for rigid honesty, inflexible impartiality and punctilious disregard for personal connections, amounting to self effacement—even outside his sphere of office. He was, by the way, one of those who would not give the benefit of their personal influence, in their private capacity and within legitimate bounds even to their nearest relations and would leave them to face the struggle of life just like other people with whom they have no concern. He had an idealistic conception of the maxim *fair field and no favour*.

Whether by accident or design, the apprehensions came out true, and Sir Carleton Moss King was imported from the Allahabad High Court to fill the Chief's *gaddi*. Strong rumours of threatened resignation by

Mr. Justice Bisheshwar Nath were rife; and some thought that that was the only dignified course to be followed as a protest against what was supposed to be a gratuitous affront. But he was too level-headed, to take a hasty step—he had plenty of *sang froid*. He bore the blow with a good grace and struck to the post. He was offered—so it was reliably understood—a seat on the Allahabad High Court Bench (perhaps as an eyewash), but he declined it, evidently because he did not like to part with his home and hearth and his native soil.

When Sir Carleton Moss King proceeded on long leave in 1936, Mr. Justice Bisheshwar Nath was appointed officiating Chief Judge. He had been in the post for well-nigh a year, when Sir Carleton's retirement was announced. Yet people were sceptic about his confirmation. But Providence is not so fickle and capricious as we suppose and she has intervals of mental equilibrium. Repetition of the previous experience, was spared, and Mr. Justice Bisheshwar Nath came into his own. His Majesty was graciously pleased to appoint him permanent Chief Judge and to confer Knighthood soon thereafter.

The news of his appointment was hailed with exuberant enthusiasm and boundless complacency. As rightly observed by the Chief Judge himself, nobody could be a better Judge of the merits of a judicial officer than members of the Bar; and the accredited representatives of the Oudh Bar announced publicly their verdict in the course of their felicitations. He was eulogized as an "independent and fearless Judge who had no favours to distribute from the Bench in the administration of justice," who had "a marvellous grasp of legal principles and was uniformly courteous and patient." He had, according to them, all the attributes of a great Judge.

It would be very unfair to the subject of this sketch to confine it to his professional and judicial existence and omit his public services. He had not been one of those successful lawyers, who keep revolving round their own self and cannot extend the sphere of their existence beyond their

domestic circle. He served the profession as Honorary Secretary of the Bar Association and member of the Oudh Bar Council for a number of years with devotion. He served his home city as Municipal Commissioner and Honorary Chairman of the Municipal Board and Improvement Trust with great credit. The Government recognised his services with the title of O. B. E. The Lucknow Municipality presented him a gratulatory address on his confirmation as Chief Judge—a rare honour, perhaps the first of its kind. It showed how profoundly he was loved and respected by the citizens of Lucknow.

He had been closely associated with the political life of the country, having been one of the General Secretaries of the Reception Committee of the Indian National Congress in 1916, and President of the Liberal Conference in 1924. The cause of education also had not been neglected. He was prominently associated with the Lucknow University from its embryonic stage and had taken active and real interest in its affairs. He had been for quite long President of the management of the Hindu Girls' High School and Hindu Widows' Home and a number of other important institutions. Charitably disposed and benevolent, he was always ready with his munificence. Every deserving cause met with a warm and generous response from him.

Now something more personal about him. He was possessed of a spotless character—a harmonious blending of virtues without the tinge of puritanism—and well-formed habits of moderation in everything. He was very sober yet genial, social and companionable; witty without being sarcastic; dignified without being haughty; simple yet decent and elegant; luxurious without being extravagant or pompous. He had very suave manners. On the Bench he was gentle but firm too, and to juniors he was particularly kind.

It was indeed remarkable that the gale from the west had not blown him off his moorings. In spite of having lived all his life in one of the most

fashionable cities of this country and in the most infectious environments, he did not yield to the seductions of Anglican fashions. He was characteristically Indian in his ways and not a bit of an anglomaniac. He had always continued to don *Achkan* and cap though he was very trim and tidy and was dressed, so to say, as a sartorial poem. It was great thing indeed, which showed he had character.

He was an all round minion of fortune, and nature had been bounteous to him right and left. Often riches and glory abide in a lonely and gloomy home, but not so in the case of Sir Bisheshwar Nath. He had been blessed with a rich harvest of progeny. He was apparently in good health and one could little imagine that he would be resigning life so prematurely. He had gone to England for his treatment and was said to be completely cured but he was not destined to reach his home alive. On his way back he suddenly expired at Bombay. This doleful news plunged the entire city of Lucknow into mourning; every heart was afflicted with grief and for long he was lamented and missed in so many spheres of life of the town.

Such, in brief, is the story of our illustrious compatriot, a life of early start and early end. There have been Judges and lawyers who came and went away with, perhaps, a more spectacular flourish than Bisheshwar Nath but few have left that enduring memory which he did !



Justice Niamatullah

By

SRI S. K. DHAON

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TO leave behind an undying fame within a short span of nine years in a place to which he did not belong, is a phase which every one has to reckon with in appraising Justice Niamatullah's career on the Bench of this Court. Being stranger to Allahabad, the people here were not without misgivings in their minds at the announcement of his appointment, but it did not take him long to convert their misgivings into the pleasure of the unexpected and strangely enough he soon became the cynosure of all eyes in the High Court. Little could they visualise that the stranger had come to them with promises of greater glory than the known ones, and for which he would never be forgotten. That he has redeemed the promise can scarcely be doubted.

Justice Niamatullah came from a respectable family in Oudh. He was born in December, 1877 and was brought up in the orthodox traditions permitting of no departures in their observance. After completing his first rudiments in Urdu and Persian under a learned Maulvi, he was sent to Government High School, Bara Banki and then to Mayo College, Aligarh.

In 1901 he joined the legal profession, starting his career at Aligarh. After about 3 years he shifted to Faizabad. At Faizabad he came to occupy the top within a very short time. A lawyer of his merit was certainly not expected to exhaust himself in the District Bar of Faizabad and in due course of time he shifted to the Chief Court at Lucknow. His rise there though, not meteoric, was not belated either, and he reached the top a little after a decade of his joining the Chief Court. Though never an aspirant for a political career, he was not averse to uniting his legal career with politics and from 1926 to 1928 he was a member of the U. P. Legislative Council and a distinguished one. Many are wont to think that in politics an enduring career can be built only upon one's unconscientious fidelity to his group, but Niamatullah's instance negatives the universality of this axiom. With a mind, disinterested and dispassionate he was only concerned with the public wellbeing. To trim his sails to the prevailing breeze of popular opinion was indeed disdainful to him. His public instinct being as remarkable as his intellectual powers he might have been the Moses of his electorate only if he had chosen to stay permanently in politics.

Few leaders in the legal profession had wielded that chastening influence on its life as Niamatullah. "To err is human and to forgive divine" and Niamatullah with all reverence for probity was ever willing to forgive those who by helplessness were driven to break it. He had an abiding thought for the briefless and the deserving. Devoted as he was to the study of law, the shirkers and the lazy had no place in his chamber. He had the gab in him not for the gallery, but for cutting the Gordian Knot in the case. He was tenacious, but not obdurate, and was never obliged to pursue a point which he knew to be wrong. Success to him came by divine right of merit and not by accident or devices.

To a lawyer so successful as he, acceptance of a seat on the Bench was not without some sacrifice. He had to bid adieu to a large income and prospects of prominence in public life. But neither he nor others ever

regretted his choice for the Bench as it is mostly upon his work as a judge of this court that Niamatullah's fame rests. In brilliance perhaps Sri Shah Mohammad Sulaiman was more, but in depth of learning and erudition both were equally celebrated. Learning in a judge without patience is quite like a ship without anchor ; it fosters opinionatedness when alone, and becomes virtue only when linked with intellectual humility. Truth generally emerges from co-ordination of contrary opinions ; judge can prepare his way to a just judgment only when he is sufficiently faithful to the gravity of hearing. In his own words "hasty, justice was the step-mother of misfortune—"FESTINATIO JUSTITIÆ EST NOVERCA INFORTUNII"—and this belief he always carried in his dispensation of justice. The profound learning indwelt in him to become still more profound by acceptance of wisdom from others. The Bench consisting of Justice Niamatullah was most welcome to the counsel. With equal earnestness he would join a counsel in scanning a proposition of law. In his appreciation of facts his vision was elastic and reached the very main springs of human conduct. An impatient colleague was never agreeable to him on the Bench, but even the most hasty was bound to be converted to his creed if he sat with him for sometime. There was hardly any Full Bench which did not include him and in each of them his exposition of law is undoubtedly the most illuminating. He was neither demonstrative nor had he in him the propensity to demolish everything coming from the counsel. In civil law even the most brilliant of his contemporaries had to yield the palm to him. In criminal law too, he was second to none. " In his habit, the judge ought to be grave and decent ; in the whole of his deportment humble, courteous, affable and meek ; the whole of his conversation ought to be savoury, wise and edifying " is what Lord Dun said in his "friendly and familiar advices " and in few, all these attributes could be seen in so much completeness as in him. His magnanimity was sublime and his indignation touched every situation.

Before joining the Bench he was associated with the Lucknow University

and as a judge of this Court he was a member of the faculty of law of the Allahabad University. On the resignation of Sir Ross Masood from the Vice-Chancellorship of the Muslim University, Aligarh, he was requested to succeed him but he declined to accept it. In the sphere of legal writing, Niamatullah has no contribution. It is indeed regrettable that with so much of erudition in him, he should have no authorship to his credit.

After retirement in December, 1937 from the bench of this Court, his name was proposed for the Judicial Committee of the Privy Council, but little inclined as he was to be away from his home, he suggested a few other names for the vacancy. This is what Sir Shadilal once said and we must take it to be true. He resumed practice at Lucknow and his scores in the second innings were as high as in the first. It seemed as if leadership was awaiting him there and it reached him running the moment he joined the Bar. He was also a member of the Judicial Committee of the former Kashmir State and the Judiciary of former Kashmir owes him not a little. On March 23, 1960 after a brief illness he passed away as we all would do.

Few lives are so spotless as that of Justice Niamatullah and of him it may be said as of Wellington "whatever record leaps to light he never shall be shamed".



Advocates General of U. S.


My Predecessors-in-Office

By

SRI K. L. MISRA

Advocate General, U. P.

I

N my appointment as Advocate General, Dr. Narain Prasad Asthana smilingly said to me, "You are my great grandchild". I was the fourth in the line of descent from him—Mohammad Wasim and Peary Lal Banerji having been the second and the third Advocates General of U. P. When, therefore, on the 13th of May, 1966, soon after his 93rd birthday, his grandchildren and great grandchildren invited a few persons to a party in his honour, I felt that I should join the hosts. And what a party it was, full of joy and frolic and fun, the toy balloons of variegated colours, glittering in the array of ninety-three candles and the children, brighter than the candles, rejoicing and clustering around him to wish him many many happy returns of the day ; and there was Dr. Asthana, his face shining with the happiness of health, age and achievements.

Any person, after his ninety years, has to face inevitable enquiries about the secret of his longevity. The usual answers are, "I do not drink, I do not smoke, I eat sparingly, I keep regular hours". Dr. Asthana has never been able to give these answers, because they would not be true. At

a late dinner, he can be seen any day enjoying the food and the drink and the after-dinner smoke with the zest of younger years. The secret of his longevity is the calm and unruffled face, the equanimity that would not be disturbed either by hilarious joy or by the depth of sorrow. What others have attempted by moderation in physical things, Dr. Asthana has achieved by moderation in thought and in emotion.

Old age has its compensations ; but how few are those who can say while growing old, that the best is yet to be in "the last of life for which the first was made." When for a person who has led an aimless and desultory life, the shadows lengthen out and the midnight hour appears to be approaching, the sense of night, leaden and paralysing, deepens the sadness of what might have been. He starts living entirely in the past, clinging to the elusive memory of his contemporaries, slipping, one by one, into the void of eternity. Dr. Asthana's life has had its light and shade, joy and sorrow. Personal triumphs and achievements have mingled with deep bereavements, but both have furnished occasions for the serenity which comes only to those who have lived without rancour and malice, and who, like Dr. Asthana, have realised that life's calamities are not necessarily a punishment and its triumphs and attainments not necessarily a reward.

Dr. Asthana is the tenth President of the High Court Bar Association, Pandit Ajudhia Nath, in 1875, having been the first President. He has been the President for 18 years, the longest term of any President, except the 25 years of Sir Tej Bahadur Sapru, his immediate predecessor. Dr. Asthana is today the grand old man of the Bar because he has not stood aloof as he has grown older. The changing society and the advancing thoughts and points of view have not left him alone and isolated. Attending the High Court almost every day, even now, he shares the joys and sorrows of the members of the Bar and is with them in their difficulties and their problems. He has remained alive and active, without the faltering steps of age, taking delight in the joy of life and joining hilarious laughter.

Dr. Asthana's career, as a lawyer, began when the rule of the British Crown over India was only 37 years' old. A century had, however, elapsed since the creation, in 1793, of the modern legal profession in India, by the first Regulation of the Governor-General, authorising the appointment of vakils. When he started practice at Agra in April, 1895, no present Judge, in India, of the Supreme Court or the High Courts, had yet been born. Dr. Asthana went, thereafter, from position to position, with the effortless strides of a person to whom achievements come, not by tireless striving after schemes for obtaining post and power, but as a recognition of merit that did not generate pride, and humility that was not affected by attainments and status. Soon after he had joined the High Court Bar, in April, 1915, he became a member, in 1916, of the U. P. Legislative Council. He was elected to the Council of State in 1927, became the Vice-Chancellor of the Agra University in 1929, LL. D., *Honoris Causa*, of that University in 1932 and the first Advocate General of U. P., when the Congress Party took office, in 1937. The post of the Advocate General had not yet become a political post, its remuneration was non-votable, and Dr. Asthana continued as Advocate General even after the Congress Ministry had resigned in 1942. The other distinctions that he achieved in the educational, social and legal spheres, the membership of the Executive Council of the Allahabad University, the Presidentship of the Kayastha Pathshala and of the U. P. Lawyers' Conference, were not epochs but merely stages of a smooth and unruffled life.

Law furnishes only the skeleton of any system of judicial administration. The muscles and the sinews, the coursing blood, that gives to an institution, like the High Court, its strength, its resilience and even its glory are furnished by its traditions. Each Judge and lawyer leaves behind him, in the wake of his advancing footprints, an aura, invisible and intangible, that makes up and enriches that tradition. It is only the memory of that tradition, wafted along the corridors of time, that shapes individual and collective

action of a newer generation. It is very seldom that the old order is carried into the new by the visible presence of a person, who has rubbed shoulders with the builders and the makers of the old and is able to share the hopes and aspirations of the new. Of those, who were practising in the High Court, when Dr. Asthana joined it in 1915, only a few remain, the privileged long lived ones, Dr. K. N. Katju, Sir Iqbal Ahmad, Sri S. K. Dar, Sri Brij Narain Gurtu, Pandit Narmadeshwar Upadhyaya, Maulvi Mukhtar Ahmad, and Sri Janki Prasada. The High Court, in 1915, was a glittering array of jewels, some of them still uncut and in the making. There was Sunder Lal, the walking encyclopaedia of laws; Moti Lal Nehru, the matchless wizard, who, to the surprise and delight of a Judge, could turn a legal proposition or an issue of fact inside out, into an unexpected attractive picture; Satish Chandra Banerji, the philosopher and man of letters, whose entry into the fields of law enriched its literature, its learning and its practice; Sir Tej Bahadur Sapru, the great constitutional lawyer, whose nobility of character and deep grasp of international affairs, carried aloft the name of India into lands across the seas; Charles Ross Alston who could, any day, convince any Judge that the defence case was a fact and the prosecution story, a fiction, and who could drag his client out of the gaping jaws of conviction, by an adroit cutting of the corners; and B. E. O'Connor, the profound analyst of facts. The cascade of brilliance of K. N. Katju and Peary Lal Banerji were then still in the womb of the future, but the promise must have even then been both visible and audible.

There were others, walking then in the corridors of the High Court building, men of keen intellect and profound learning who chose to go to the Bench. There was Shah Muhammad Sulaiman who combined a profound knowledge of law with the clarity and precision of thought of the mathematician and who, later took up cudgels with Einstein on certain aspects of the theory of Relativity; Iqbal Ahmad who could dispose of 124 cases under Order 41, rule 11, C. P. C. in a single day and yet satisfy every counsel

that he had been fully heard and who went to the heart of a criminal case while his brother Judge was still groping with the First Information Report ; Surendra Nath Sen, the effulgence of whose literary phrases illumined the dark corners of law and Uma Shanker Bajpai, suave and impeccable, whose gentle smile and witty literary words helped a stumbling and groping counsel, across the barriers of each obstacle in the case. There were other notable contemporaries of Dr. Asthana : Gokul Prasad, Sital Prasad Ghosh, G. W. Dillon, S. C. Choudhri and Satya Chandra Mukerji. The Bar of the High Court, in 1915, had the good fortune of containing men, whom Providence had chosen to mould the destinies of the nation—Pandit Madan Mohan Malaviya, clad in a cream *achkan* with his soft tongue and sweet persuasive voice, Jawaharlal Nehru, then fresh from Harrow and Cambridge, Purushottam Das Tandon, the embodiment of scruples and conscience and Ishwar Saran, the redoubtable champion of the Harijans.

The names of these, giants in their days, have passed into the history of this Court and some of them into the history of this country. Their lofty thoughts and the impress of their activities have been woven into the texture that forms the valuable traditions of this Court. Dr. Asthana not only carries the living memory of these men, but is an embodiment of that culture and tradition created and enriched by them.

The decades, that have passed since Dr. Asthana began the practice of law, have seen upheavals of the political, social and economic structure. Men have come on the stage of life and have gone, institutions have crumbled and been replaced, the world of 1966, has become unrecognisable to the citizen of 1915, but the changing panorama of life has not affected Dr. Asthana. The fundamentals of life do not change. Goodness is more rare and more difficult to attain than greatness. An infinite capacity for taking pains is said to produce a genius but a good man is God's own creation. Dr. Asthana has survived, like a pole star, and will continue for long long years to come because he is essentially and truly a good man.

Mohammad Wasim succeeded Dr. Asthana. The short period, during which he was Advocate General, was an interlude rather than a term. The atom bomb had finished the war in Asia. The marching columns of the Russian armies and waves of American bomber squadrons were, inevitably, closing on Germany. As the war clouds scattered over Europe, the agitation in India, for a separate Muslim State, increased in volume and intensity. Chaudhari Khaliquzzaman, brother-in-law of Mohammad Wasim, had broken away from the Indian National Congress and led the Muslim League, in its agitation for a partition of India. Mohammad Wasim was essentially a man of law, devoted to his profession, but the lure of politics, and his brother-in-law, led him into adopting the Muslim League ideology.

Mohammad Wasim had been called to the Bar and had joined Lincoln's Inn on the 27th January, 1908. He came to India and joined the Avadh Bar at Lucknow and became one of its leaders. With a clear and comprehensive grasp of the law of procedure and the Oudh Estates Act, Wasim became the idol of every Taluqedar, who went to law Courts. Gifted with the capacity of precise thinking and expression, he had his answers ready to every question in a Court-room and had risen to a place among the leaders, more than two decades before his appointment as Advocate General by the Governor of Uttar Pradesh.

With the partition of India, Mohammad Wasim migrated to Pakistan and became a Judge of the High Court at Dacca, and later the Advocate General of Pakistan. He represented Pakistan as a member of its Delegation to the United Nations Organization. Mohammad Wasim died in Pakistan far away from the field of his life's labours and the large circle of his friends in Lucknow and Uttar Pradesh. His successor to the post of Advocate General of Pakistan was another member of the Avadh Bar, Mr. Faiyaz Ali.

The time during which Mohammad Wasim was the Advocate General of Uttar Pradesh was too short for any deep or lasting impression being created. He stood at the parting of the ways and deliberately selected the road to Pakistan. His gentle and courteous manner and his neat presentation of cases would continue to be remembered by all those who had come in contact with him.

III

When Mohammad Wasim relinquished the office of Advocate General, a new and free India had been born. The dawn of freedom brought, in its wake, the responsibilities of freedom which were bound to be more onerous than those in the routine administration of a foreign Government. Victory over a towering imperialist power, with the matchless and unprecedented weapon of a non-violent fight, had given delight and jubilation. But the people had come on the stage, and the glare of the footlights had brought into prominence their poverty and ignorance. The small tillers of the soil, who provided food for society, were living under a subordination, more pervading and intimate, and, sometimes, more harsh, than foreign domination. The subordination of man by man was inconsistent with the dignity of a citizen of free India. Landlordism had to be abolished to restore that dignity, even though its disappearance might not, immediately, solve any economic problem. Human personality had to be freed, even if the loosening of the bonds of the landlord over the tenant created new and unforeseen difficulties.

Visible on the horizon were many of the complexities that would arise in the process of transforming the economic and social structure of society. The task of giving advice to Council of Ministers in the construction of that new structure, and of the wheels of law on which a free democracy would move on its onward march to peace and prosperity, though fascinating,

was likely to be beset with hurdles. A Constituent Assembly, of a sovereign nation, was engaged in the task of framing a Constitution for a free people. The dignity of the individual and his rights were bound to be recognised and guaranteed by the Constitution. The law of the future would require the language and content of liberty. The atmosphere was pregnant with immense possibilities. Even though it might become a routine selection later on, the choice of an Advocate General of the largest State in India, adequate to that occasion, had to be of the very best person available.

There was nothing then to cloud the vision or impede a selection on merits. The narrow grooves of personal power-politics, that reduce selection into jobbery, had not yet been formed. The ideals, with which Mahatma Gandhi's saintly leadership had saturated the country, had not yet been blunted by tireless stale repetitions in the speeches of the politician. Clean and noble patriotism, that the national fight had aroused, had not yet been reduced to meaningless shibboleths and slogans, for capturing power and position. The choice was easy. Sir Tej Bahadur Sapru, even if he could have been possibly persuaded to accept, was no longer in active practice. Dr. Kailas Nath Katju had been in the vanguard of the battle for freedom and was in a Cabinet post. Peary Lal Banerji, the acknowledged leader of the Bar, was the obvious choice and was selected.

But Peary Lal Banerji's appointment, as Advocate General of Uttar Pradesh, was not based upon political considerations. By his upbringing and conviction, he had been loyal to the British Crown. He was the second son of Shri Dwarka Nath Banerji, a leading criminal lawyer in the High Court, who had joined the rank of Barristers and who spent the High Court vacations, like European Judges, outside India. Dwarka Nath Banerji had become a British subject and his third son, born in England, was named 'George'. He gave to Peary Lal Banerji, as inheritance, not only a love of the English language, but deep respect for the British Crown. Though Peary Lal Banerji's loyalty had not the servile, cringing quality of the fawning

publican, there was nothing common, in ideals and outlook, between him and the Congress Government. Future Government was bound to be based on a positive policy, and an Advocate General had to be in tune with that policy. Peary Lal Banerji's appointment, therefore, was an experiment into the darkness of the unknown, but it was hoped that his eminence, his profound knowledge of law and the deep respect that he was bound to command, would smoothen the obstacles that might arise. That hope was not belied, though no occasion arose for his attending the Legislature, even after the right of the Advocate General to attend and take part in its proceedings had been recognised by the Constitution.

Besides the love of the English language, Peary Lal Banerji appears to have inherited from his father, the English habit of meticulous punctuality. It was possible to regulate a watch by his daily routine; his sitting, in his office from 7.30 to 9 in the morning, and, summoned by the gong, at his dinner table at 8.30 in the evening. Year after year, he would leave Allahabad, for his summer vacation, by the forenoon train on the 20th of May. His daily fees, for professional services were fixed and would not be varied, on any provocation. The identity even of the pair of shoes that he would wear on a particular day were known.

But regulated as his life was by a chronometer, Peary Lal Banerji was a person of deep culture and sensibility. Culture had, in fact, walked into his house when he married Shanta, the daughter of Shri S. P. Ganguli, a close relative of Rabindra Nath Tagore. Peary Lal Banerji's residence, 41 George Town, was named Shantavas after his wife, and, on two occasions, Tagore came and stayed at Shantavas. Shri Ganguli himself lived there for years and planned a beautiful garden of fruits and vegetables including a Japanese miniature Table garden. In later years, the garden was enriched and ornamented, with exquisite taste, by Peary Lal Banerji's close and constant friend, Pandit Narmadeshwar Upadhyaya, when it became a feast for the eyes of the connoisseur.

Peary Lal Banerji, at the age of 25, joined the High Court Bar in 1908, somewhat reluctantly, at the insistence of Dr. Satish Chandra Banerji. Many advocates have found that part-time teaching in law, in the Allahabad University, has been a stepping-stone either to the Bench or to eminence in the profession. Peary Lal Banerji became, after Sir Tej Bahadur Sapru, a part-time lecturer in law, but his rapid rise in the profession, soon engrossed all his time and attention.

Peary Lal Banerji's command over the English language was a marvel. I have not myself heard any other Advocate in India having that matchless combination of diction, rhythm and facility of speech. During about twenty years that I had the privilege of hearing him, I cannot recollect a single occasion when he hesitated or slurred over a word, or where a sentence, howsoever complicated, once begun, had to be reconstructed. The regular cadence that appeared to pour forth from an inexhaustible vocabulary was never interrupted or disturbed. But it was not merely an amazing flow of words. His language in the law courts, couched in phrases, inspired by the width and variety of English literature and classic expressions in Privy Council judgments, would have brought credit to any Advocate in the world.

But a mere emphasis on the flow of words would give an inadequate picture of Peary Lal Banerji. A facility of speech, or a seeming command over words may merely be the smooth expression of a superficial acquaintance with a problem. A facile jack of all trades, with a gift of the gab, will not make a great or even a competent Advocate. The mind of a trained Advocate is an apparatus and a technique of thinking. It is a storehouse of classified relevant material, informed with commonsense, derived from constant contact with the outside world. Peary Lal Banerji's language was the outward expression of a profound knowledge of law and precise thinking. The depth of language was only the manifestation of the depth of his thoughts.

The depth of the learning of an Advocate scatters itself through his spoken words. It leaves no memorial behind. When it reaches the heart of a Judge, it sometimes shines out, but only anonymously, through great and immortal judgments. But there are occasions when the memory of a profound and discerning mind is left in the archives of time. Let me illustrate :

A dispute of succession to the properties of the Majhauuli Raj opened in about 1923. The Raj was owned by an ancient family in which the sister of Gautam Buddha had been married. It had a known and unbroken descent of successive Rajas, beginning in the mist of antiquity, and right through the Christian era. Succession to the Raj was governed by the family custom of male lineal primogeniture. A Raja had died in 1911 and the Court of Wards was in possession on behalf of Rani Shyam Sunder Kuer, the widow. The remote collateral, who was in possession of a *Babuai* grant, given to his ancestors, claimed the estate against the widow. He could only succeed if he still formed a joint family with the Raja and was a member of the coparcenary of an impartible estate under the Hindu Law. The defence to the claim was that the common ancestor had lived 200 years away in the past, that for about a hundred years there was not only separation in ownership of property, food, residence and worship, but there had been a bitter feud, handed down from generation to generation, between the family of the Raja and the family of the claimant. It was inconceivable, said the defence, that the unstable cohesion of a joint Hindu family, which is broken into separation by the mere jolt of an expressed intention, could have withstood all the indicia of separation and the bitter hostility of the Raja's family with the remote family of the claimant.

Banerji appeared for the claimant on the date of issues and was called upon to make a statement. He asserted that the claimant was a member of the notional coparcenary of an impartible Raj and could lose his right to succeed to the estate only by an express renunciation of his right to succeed. His possession of a *Babuai* grant was conclusive evidence of

jointness and nothing else, said Banerji, was relied upon to establish jointness.

On the state of authorities then, the confidence behind the statement, made on the date of issues, was amazing. When the case went to trial, voluminous evidence, which would have proved separation, ten times over, in an ordinary *Mitaksbara* family, was led. Shri T. N. Mulla, the District Judge, made a clear and close analysis of the evidence and, relying upon the decision of the Privy Council, in *Tara Kumari's* case, 42 I. A. 192, held that separation had been proved. Peary Lal Banerji argued and won the appeal, in the High Court, against that decision. But even before the decision of that appeal by the High Court, in 1930, came the Privy Council decision in *Konammal's* case, 55 I. A. 114, in 1928.

Both in *Konammal's* case and in the appeal from the decision of the High Court, in the *Majhauji Raj* case, the Privy Council echoed the very words which had been used by Peary Lal Banerji on the date of issues. In saying, that the judgment of the District Judge in the *Majhauji Raj* case was the only possible judgment, in the unsettled state of law on a very vexed question, the Privy Council paid a silent tribute to the insight of a person who had seen the law with clarity, even when it had been submerged by the turbid atmosphere of uncertain judicial pronouncements.

The appearance of Peary Lal Banerji and Kailas Nath Katju, against each other, was a familiar sight in three or four decades that preceded Mr. Banerji's death in 1952. The good fortune of those who have seen them in action against each other is incomparable. Banerji marshalling his facts and law, in an impressive array, like the timed rhythm of the marching of an array of thousand disciplined feet, seldom looking at the Judge, even when replying to a question, and carrying the case on the vehicle of clipped, precise classical expressions and Kailas Nath Katju, the great case winner, with an intellect that had the scintillating brilliance of a diamond, pulling

out of the mass of facts and law, the unexpected winning points with adroitness of a wizard. None of them depended on elaborate notes. Banerji's entire notes, in a heavy First Appeal, would consist of two pages of his register, containing the exhibit numbers and pages of documents in the paper book, chronologically arranged. Katju's notes were even more scanty. When a hostile Judge interrupted with an objection, Banerji, apparently indifferent to results, would reply with words, telling and eloquent, that would silence the objection by the mere weight of the reply. Katju, keen for victory, would look up and say, "What, My Lord". With a face full of the delight of battle and with a twinkle in his eyes, he would bring out the unanswerable point, that sometimes, even more effectively, met the objection. The one was a torrent that brushed aside obstacles by its volume and weight, the other was a pointed arrow that, swiftly, sped and hit the bull's eye with accuracy and effect. Banerji and Katju against each other and before a Full Bench consisting of Sulaiman, Lal Gopal Mukerji and Niamatullah, presented a sight and an unforgettable experience and if the gods were nearabout, they came to see and hear.

Banerji amassed a fortune in the practice of law. He had the habit, formed from his earliest years, of depositing half his income as savings. He had a horror of waste. He would, scrupulously, save the paper covers of magazines and use them as note paper and even for sending informal communications to his friends. Nothing that could be utilized was ever thrown away. His habits of economy were caricatured by a story of how, while walking on the road, he once met an old friend of his father, who pointed out the contrast between the coat that Banerji was putting on and the modern tailored coats of his father ; and Banerji replied, pointing out to his own coat—"But why do you say so, this in fact is my father's coat". But his regulated life and his thrift enabled him to leave, on his death, trusts, in favour of his two sons and his brother George, each valued at several lakhs of rupees.

Peary Lal Banerji had become an institution when he died. During the last days, afflicted with ailments, he attended the High Court and the Supreme Court, for the State of Uttar Pradesh, to oppose the challenge to the Zamindari Abolition Act. It was a sad and solemn day for the High Court, when, accompanied by the members of the Bench and Bar, his funeral procession went on the last journey to the burning ghat. For myself, I have never lost the feeling that, when I succeeded him, I obtained a "laurel, greener from the brows of him who uttered nothing base".



■

Pen Portraits of eminent Advocates

■

Munshi Hanuman Prasad

By

SRI ONKAR NATH MEHROTRA

Advocate, High Court, Allahabad

IN the early part of the 19th century a band of pioneers from what is now known as eastern district of U.P. moved over for practice, to the Sadar Dewani Adalat at Agra, where, under the guidance of their able leader M. Man Rai, they established themselves in the legal profession. Among them was a young and ambitious lawyer, Hanuman Prasad, who drew special attention, on account of his legal acumen and mastery of the Court language which was, at that time, Persianized Urdu.

He was born in a well-to-do Zamindar family of Varanasi, and, having passed his Examination in Law, was appointed a munsif, his first posting being at Mughalsarai. After some time his services were lent by the Government to the Maharaja of Banaras, Sir Ishwari Prasad Narain Singh, who appointed him Manager of his family domains. But, due to differences with the Maharaja, he resigned from the Banaras State, as also, from Government service, and on the advice of M. Man Rai, accompanied him to Agra, where he lived at Gokulpura and started practice in the Sadar Dewani Adalat.

By a Charter granted by Queen Victoria in the year 1866, the High Court of Judicature at Allahabad came into existence.

So he shifted to Allahabad, and with the help of Mr. T. Conlan, Bar-at-Law, who was his great friend, learnt English at the age of 45 and for his part taught Persian and Urdu to Mr. Conlan. Both the teacher and the taught performed their task with the utmost fidelity and soon M. Hanuman Prasad was able to appear and argue his cases in English, which had become the language of the High Court.

Before a Bench of the newly established High Court at Allahabad, was, appearing a counsel clad in *Achkan* and turban, when the Judge remarked, "Munshiji, Yahan Angrezi Men Bahas Hoga, Urdu Ya Fharsi Men Nahin". Pat came the reply, "Yes, my Lord, I am fully prepared with the case". This surprised the Judges quite a bit. Thus appeared on the horizon of the new High Court, a luminous star, M. Hanuman Prasad.

He soon became the acknowledged leader of the Bar and established a very lucrative practice and was the Chief Editor of the Allahabad Weekly Notes. The annals of the Law Reports bear testimony to his merit and ability. He was the seniormost among the founder members of the Vakils' Association.

M. Hanuman Prasad was also a renowned social reformer, an erudite scholar and a great philanthropist. He became the first and also the life President of the Kayastha Pathsala Trust, which was founded by the late M. Kali Prasad Kulbhaskar, himself a prominent and eminent lawyer of the then Avadh Bar. The institution of the Kayastha Pathsala, under the able patronage of M. Hanuman Prasad, laid the foundation for the present Kayastha Pathsala Trust, which can now boast of several Degree Colleges and Hostels including the Sampurnanand Hostel and Rajendra Chhatrawas.

Mr. Hanuman Prasad was a voracious reader. He built up a great library, not only of Law, but on various subjects, e.g. History, Literature, Religion, Urdu, Persian, Sanskrit, and even a volume of Japanese dictionary

can be found among his collections. He was a patron of music and himself a musician of no mean merit. He loved horses and at one time his stable could boast of as many as 30 horses of the best available breed.


Among his friends and contemporaries were eminent lawyers and jurists, namely, Sir Arthur Colvin, Nawab Abdul Majid, Mr. T. Conlan, Pt. Ajudhia Nath, Sir Sunder Lal and Sri Jogendra Nath Chaudhry.

Having amassed considerable wealth, he left behind him, as his legacy when he died in 1888, not only great fame and fortune, but also a line of worthy successors. His son M. Madho Prasad practised with him. One of his grandsons, the late Rai Bahadur M. Gokul Prasad was elevated to the Bench of the High Court on the 12th May, 1920, and was the last Hony. Vice-Chancellor of the Allahabad University. Mr. Gokul Prasad was succeeded by his son Shri Badri Narain, who made a fair mark in the legal profession and officiated as Government Advocate for some time but died at a young age of 45 years, in 1937. His son, Shri Ganesh Prasad, is a practising Advocate in the High Court and is the Honorary Secretary of the High Court Bar Association. Munshi Ambika Prasad, another grandson of M. Hanuman Prasad is one of the leaders of the Bar on the Civil side. He is a Vice-President of the High Court Bar Association and the President-elect of the U. P. Lawyers' Conference, 1966.



Pandit Ajudhia Nath

By
MR. JUSTICE JAGDISH SAHAI

MONGST the giants that the Bar of this Court has produced, Pandit Ajudhia Nath is one of the greatest as also one of the earliest. His career was meteoric. Son of Pandit Kedar Nath, he was born at Agra in a Kashmiri family on 8th of April, 1840 and died at Allahabad on 11th of January, 1892. In this span of less than 52 years he compressed activities and achievements which another person would not succeed in doing in a century.

His father was, for some time, the Diwan of the erstwhile state of Jhajhar near Delhi and was a prominent citizen of his time.

He learnt Arabic and Persian in his boyhood and acquired proficiency in both the languages. Later on he acquired knowledge of English, studied law and was enrolled as a pleader of the Sadar Dewani Adalat at Agra. Even as a student, he showed signs of rare promise. The Government report on popular education for the year 1860-61 referred to him as "an intelligent

and promising student” and to his answer-books in History and Philosophy as marked by “uncommon acuteness and thought”.

Due to the unusual gifts with which nature had endowed him and to which he added industry and application, he virtually marched into the legal profession without having the usual waiting. His practice steadily grew and by 1866 he was recognized as a leading member of the Bar of the Sadar Dewani Adalat.

In the year 1869, a Law Professorship fell vacant in the Agra College, to which he was appointed unsolicited, though there were a very large number of applicants for the same.

When the Court moved from Agra to Allahabad, Pandit Ajudhia Nath also shifted to this place. Here he added fresh laurels to his crown and attained the status of one of the recognized leaders of the Bar and one of the most prominent citizens of the country. His death created a void and there was a widespread gloom all over the country. In the reference on the occasion of his death, Sir John Edge, the then Chief Justice said “It was always a pleasure to us to listen to, and we frequently derived instruction from, the legal arguments of Pandit Ajudhia Nath. I confess that I have not unfrequently been captivated by the display on sudden and difficult emergencies in his case of his knowledge of law, the subtlety of his mind and his persuasive powers.”

In this Court there was hardly a case of any importance or of any magnitude in which Pandit Ajudhia Nath did not appear on behalf of either of the parties. The Law Reports of his times are full of cases argued by him. Their perusal bears testimony not only to Pandit Ajudhia Nath’s mastery of law, but also to his great forensic talent and a capacity to put the case for his clients at the highest level but without departing from the record.

It is not possible, in a short note like the present, to mention the various cases in which he appeared in this Court, with marked distinction. I am mentioning only some of the interesting ones. One of them is Empress

of India *vs.* Sarmukh Singh (I. L. R. 2 All. 218) in which for the first time the power of the Indian Legislature to enact a law was challenged in an Indian court. In the year 1879, a soldier of the Indian Army serving at Cyprus was charged for having committed murder there. He was put on trial before an Agra Magistrate. The Magistrate refused to hold the proceedings on the ground of want of jurisdiction. The local Government brought the case to the High Court. The Division Bench, before which it was listed, directed the Magistrate to enquire into the charge. After his conviction, the soldier preferred an appeal to the High Court. Pandit Ajudhia Nath, who appeared for the soldier in the High Court, challenged the proceedings, on the ground of want of jurisdiction of the Court as also on the ground that the law was *ultra vires* the Indian Legislature. The case was referred to a Full Bench. The Full Bench held that the Court was not precluded by the order of the Division Bench from considering whether the accused person has been rightly convicted. The question relating to the *vires* of the law was left undecided with the observation that "the answer to these questions in the affirmative might be successfully disputed".

In Lal Singh and others *vs.* Ghansham Singh (I. L. R. 9 All. 625), Pandit Ajudhia Nath challenged the constitution of the Full Bench hearing the case on the ground that the High Court itself was not properly constituted, inasmuch as, instead of there being a Chief Justice and five other Judges, there were at that time only the Chief Justice and four other Judges, the vacancy of the fifth Judge not having been filled up. Though the submission was not accepted and it was held by the Full Bench that it was not intended that if the Crown or the Government should omit to fill up a vacancy among the Judges, under the powers conferred by section 7 of the High Courts Act so that the Court should consist of a Chief Justice and four Judges only, the constitution of the Court should thereby be rendered illegal, and the existing Judges, incompetent to exercise the functions assigned

to the High Court. A reading of the Report of the case shows the forensic powers and the grasp of constitutional law possessed by Pandit Ajudhia Nath.

It will be interesting to note that at one time it was seriously urged that the High Court of Judicature at Allahabad had only the power of superintendence over the subordinate courts and not judicial powers to revise or interfere with the orders of the subordinate courts. (See I. L. R. 9 All: 104). Pandit Ajudhia Nath appeared in the case and submitted that, by virtue of section 15 of 24 and 25 Vict. c. 104 (the Indian High Courts Act of 1861), the Court had also judicial powers to interfere with or revise judicial orders passed by the subordinate courts. The Full Bench, by a majority, held that, under section 15 of 24 and 25 Vict. c. 104, it is competent for the High Court in the exercise of its power of superintendence, to direct a subordinate court to do its duty or to abstain from taking action in matters of which it has no cognizance, but the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a subordinate court on the ground that the order of the subordinate court has proceeded on an error of law or on an error of fact. The minority view of this Court, which was expressed by two out of the five Judges constituting the Full Bench, held that the word "superintendence" used in section 15 of the Charter Act contemplated and now included powers of a judicial or quasi-judicial character apart from those conferred on the Court by section 622 of the Civil Procedure Code.

Pandit Ajudhia Nath commanded the esteem and respect of not only the members of the Bar, but also of the Bench of the Court. In the year 1888, the then Chief Justice offered to make him an Advocate of the Court and thus extended to him the privileges which were then confined to the members of the English Bar only (Barristers). Pandit Ajudhia Nath declined the honour saying that he could not take it so long as the other Vakils of the High Court did not get it. Later on, as is well known, some other members of the Vakil Bar accepted to become Advocates.

Another instance, which shows the esteem in which Pandit Ajudhia Nath was held by the Bench of this Court, is provided by what happened in 1889. Along with Pandit Ajudhia Nath was engaged a young English Barrister who, by virtue of his being a member of the English Bar, had the right of pre-audience. The appeal was being argued before a Bench of which the Chief Justice was a member. The English Barrister stood up and opened the case. The client, who was standing behind, wanted it to be argued by Pandit Ajudhia Nath, and, for that reason, pulled from behind the English Barristers gown more than once and also requested Pandit Ajudhia Nath to argue the case. Insistent on his right the English Barrister continued unbothered. The Bench noticed this and soon retired to their Chamber. The young English Barrister was called by the Judges and was told not to behave in the manner he had done and to allow Pandit Ajudhia Nath to argue the appeal. Thereafter, the Bench re-assembled in the Court and Pandit Ajudhia Nath concluded the arguments. Today, when we are living in the sunshine of independence with a completely Indian Bar, it is not possible to realise what talent and force of personality was required for an Indian, in the second half of the nineteenth century to reach the highest rung of the professional ladder. The Allahabad Bar of Pandit Ajudhia Nath's time, like the Bars of Calcutta, Bombay and Madras, was the virtual preserve of English Barristers. It was given to Pandit Ajudhia Nath to break that close ring, force his entry into the front rank of the Bar and attain the status of a doyen.

Even though law is notoriously a jealous mistress, Pandit Ajudhia Nath did not confine his interest or attention to law alone. He was one of the first nine members of the Legislative Council for the North-Western Provinces and Oudh, which was established in 1886. He took full part in the proceedings of the Council and distinguished himself there.

He was intimately connected with the Indian National Congress, though not one of its founder members. How his connection started with the Congress is described by Mr. W. C. Bonerjee, its first President in the following words :

“I was here (Allahabad) in April 1887, and met Pandit Ajudhia Nath who had not then expressed his view one way or the other about Congress matters. I discussed the matter with him. He listened to me with his usual courtesy and urbanity, and he pointed out to me certain defects which he thought existed in our system; and at last after a sympathetic hearing of over an hour and a half, he told me he would think of all I had said to him, and that he would consider the matter carefully and thoroughly, and then let me know his views. I never heard anything from him from that time until on the eve of my departure for Madras to attend the Congress of 1887. I then received a letter from him in which he said I had made a convert of him to the Congress cause, that he had thoroughly made up his mind to join us, and he sent a message that if it pleased the Congress to hold its next session at Allahabad in 1888, he would do all he could to make the Congress a success. And you know certainly those of you who attended know what success he did make of it.”

Pandit Ajudhia Nath was the Chairman of the Reception Committee of the Congress Session of 1888 held at Allahabad. Of this, Mr. W. C. Bonerjee has spoken as follows :

“Pandit Ajudhia Nath as you know, from the time he joined the Congress worked early, worked late, worked with the old, worked with the young, never spared any personal sacrifices, so that he might do good to his country and to the Congress. Our venerable President of the Reception Committee of this Congress had told us of the difficulties which had to be encountered to make that Congress a success; and I do not belittle his services or those of any other worthy Congressman who worked with him at that Congress, when I say that it was owing to Pandit Ajudhia Nath’s exertions that Congress was the success it was.”

In arranging the Congress Session at Allahabad, Pandit Ajudhia

Nath had to encounter great opposition and difficulties. At that time the sun of the British Raj was at its meridian and the bureaucratic administrative set up could not countenance any progressive or political activity in the North-Western Provinces and Oudh. Both Dufferin, the Viceroy, and Colvin, the Lieutenant-Governor, were opposed to the idea of a Congress Session at Allahabad; but the "intrepid and unselfish" Pandit succeeded where others would have failed.

Pandit Ajudhia Nath's services to the Congress and his steadfast and dedicated devotion to it, though unfortunately forgotten now, received universal contemporary recognition. When Mr. A. O. Hume left for England, he, by general consent, was elected the Joint Secretary of the Congress; and it had been almost resolved to offer him, the honour of the chair of the Seventh Congress Session held in 1891, had it not been for the feeling that Bombay and Calcutta having till then supplied all the Presidents, Madras should have a chance before the turn of the North-Western Provinces came. For this reason, Rai Bahadur P. Ananda Charlu was chosen to preside over the 1891-Session of the Congress at Nagpur. Pandit Ajudhia Nath proposed the name of Rai Bahadur P. Ananda Charlu and Sir Pherozshah Mehta seconded it. While seconding the proposition Sir Pherozshah Mehta said: "I have great pleasure in seconding the resolution which has been placed before you by the Hon'ble Pandit Ajudhia Nath. I have no doubt that the delegates present would have rejoiced if the Hon'ble Pandit himself had been voted to the chair this year. But we know that he is as modest and unselfish as he is public spirited, patriotic and energetic. But while we should have been glad to see the Pandit in the chair, we are equally glad to hail as President this year, a representative from that presidency which has done so much for the Congress."

Rai Bahadur P. Ananda Charlu in his address said: "The Hon'ble Pandit Ajudhia Nath is unfortunately for both you and me not a Madrasee. Were it not that he generously abdicated the dignity in favour of Madras,

I should gladly have avoided the danger of accepting a situation that would draw me into comparison with that unselfish, whole-hearted, intrepid, and outspoken apostle of this great National Movement." At this Session, one of the resolutions moved by Pandit Ajudhia Nath was for reducing the incidence of salt-tax and raising the income-tax taxable minimum from Rs.500 to Rs.1,000.

When Pandit Ajudhia Nath died on 11th January, 1892, on his return from the Nagpur Congress Session, the whole country was plunged into deep grief. At the Eighth Session of the Congress held in the year, 1892, Mr. W. C. Bonerjee spoke about him in the following words :

"Standing on this platform and speaking in this city, one feels almost an overpowering sense of despair when one finds that the familiar figure and the beloved face of Pandit Ajudhia Nath is no more. We mourned for him when he died, we have mourned for him since ; and those of us who had the privilege of knowing him intimately, of perceiving his kindly heart, his great energy, his great devotion to the Congress cause, and the sacrifices he made for that cause, will mourn for him to the last."

Sir William Wedderburn, in his book on Allan Octavian Hume, writes : "As is well known there is no one for whom he (i. e. Allan Octavian Hume) had a more sincere personal regard than Pandit Ajudhia Nath."

To the cause of education Pandit Ajudhia Nath contributed generously both in time and money. He was the founder of the Victoria School (now Victoria College) at Agra. He was also a member of the Senates of both the Allahabad and the Calcutta Universities. The Vice-Chancellor of the Allahabad University, while speaking of Pandit Ajudhia Nath, observed :

"He took a very keen interest in education, was a constant attendant at our meetings, and brought to bear upon our work intellectual powers which only few possess. He was a man of whom any country and any race might well be proud. His character was of the highest, his

ability was undoubted, and his acquirements were of the most varied description.”

Pandit Ajudhia Nath gave attention to journalism also. In 1879 he started an English daily newspaper styled “The Indian Herald”. The undertaking unfortunately proved to be a failure even though he spent a lac of rupees in it. Undeterred he started another organ called “Indian Union” in the year 1890 and Pandit Madan Mohan Malaviya was placed in charge of it. The latter always acknowledged with gratitude his association with Pandit Ajudhia Nath.

Pandit Ajudhia Nath’s connection with this Court has not ceased with his death. Fortunately we have today in our midst his worthy son, Pandit Gopinath Kunzru, who is a recognized leader of the Bar and is highly respected.

The Centenary of the High Court and Pandit Ajudhia Nath are separated from each other by almost 69 years. The Pandit has grown into a legendary figure and even though the present generation had not the privilege of seeing him, his name is still resounding into our ears. For us, who stand separated by time from him, it is difficult to visualise what a towering, compassionate and intellectual personality Pandit Ajudhia Nath was. Fortunately, however, for us, the record of his achievements is preserved not only in the Law Reports and the proceedings of Indian National Congress but also in the proceedings of the North-Western Provinces and Oudh Legislative Council and the Universities of Allahabad and Calcutta as also in the legends that have grown round his famous name. On this day, when we are celebrating the completion of hundred years of this Court, it is only just and proper that we humbly remember him with reverence and gratitude.

In Memorium

The Late Mr. Jogendra Nath Chaudhri

By

THE LATE RT. HON. SIR TEJ BAHADUR SAPRU

I WAS away at Lucknow where I read in the papers of the death of Mr. J. N. Chaudhri. The news did not come to me as a surprise. I had met him a few days before I left for Lucknow and notwithstanding the great power of physical resistance which he possessed I felt when I saw him last that the end was not very far. Nevertheless, the news saddened me more than I can say, for it revived memories of a generation of lawyers, that is fast disappearing if it has not already disappeared. He has died full of years—very few of us can hope to attain to his age. He has died in the bosom of his family, and his end has been as peaceful as his entire life was. For, it must be remembered that he was, above everything else, a peace-loving man. Gentility was the dominant note of his character, and no one of us, who knew him at the zenith of his professional fame or who were privi-

leged to see him in his retirement, ever knew or felt that Mr. Chaudhri had or could have an enemy, or that his placid nature could ever be perturbed by events or things shaping otherwise than he expected or would like them to do.

In the obituary speeches that were delivered in the High Court the other day both Mr. Durga Charan Banerji and Mr. O'Connor paid him generous tributes and Mr. O'Connor, himself a worthy representative of the old generation of 'Leaders', said how much he learnt in his early days from hearing Mr. Chaudhri in the High Court. "May I be permitted to pay my own tribute to his memory and give a few of my recollections of the days when he divided the leadership in the profession with the giants of those days?"

The High Court in 1898

In 1898 when I shifted to the High Court as an inexperienced and unlearned junior, the towering personalities in the profession were Mr. Conlan, Mr. (afterwards Sir) Walter Colvin, Mr. Dwarkanath Banerjee among the representatives of the English Bar, Pandit (afterwards Sir) Sunderlal, Mr. Chaudhri, Munshi Ram Prasad and Pandit Motilal Nehru—happily still with us. To us juniors of those days, they were awe-inspiring names, and some of us felt that they were unapproachable. Mr. Conlan used to appear in some of the heavy first appeals, his opening of his cases was a treat—so brief, so terse, so lucid, and so forceful. Sir Walter was the recognized leader on the criminal side—though he, not infrequently, was briefed in some important civil appeals—and yet both of them were so kind, so generous, so encouraging to the obscure juniors of these days when they had to devil for them, that there are still two or three of us who can recall their memories with genuine gratitude. Among the Indians,

the two most solid leaders were Pandit Sunderlal and Munshi Ram Prasad. The former's memory was supposed to be phenomenal and his only rival in that respect was supposed to be Sir Promoda Charan Banerji. He was in truth a store-house of case-law. Not only did he know his 'rulings', but what is more he could make such effective use of them. It was a few years later that he developed a fluency in court which was all the more surprising to us when we found that, outside the surroundings of a law court, his manner was halting, hesitating and unimpressive. A profound lawyer, a resourceful advocate, full of tact and skill, when he handled a complicated case you felt that he knew not only the salient features of the case, but was a master of the minutest details. Munshi Ram Prasad struck me in those days as a man of great personal dignity, possessed of singular ease of manner, brief, emphatic, and depending more upon a common-sense view of the case than upon any legal subtleties. The rising star among the leaders was Pandit Motilal. I speak with a reserve about him; for, though a survivor of a generation that has disappeared, he may, I hope and pray, be with us for many many years to come to remind us of the brilliance, the clear thinking and the skill on which he built up his reputation.

Mr. Chaudhri's Advocacy

I now come to Mr. Chaudhri. It is difficult for me to say what exactly was his place among these four men. Perhaps Sir Sunderlal made more money in those days, but Mr. Chaudhri was scarcely less sought after than any one of the three others whom I have named above. His advocacy—I say so without disrespect to any one else—seemed to me to be of a distinctive order. I had the privilege of being associated with him as his junior in one important original trial

and a number of appeals in the High Court. There was no lawyer who hated rulings more than he did; he positively discouraged his junior from placing a long array of rulings before him, and yet his grasp of principles was so firm, and so accurate. He could enunciate a proposition of law so clearly, and convincingly that he found it necessary on extremely rare occasions to discuss for any length of time the case-law. He hated details—he was not in the habit of making copious notes—he cared more for what he once described to me as the ‘pivotal facts’; and if he could win his case upon documentary evidence, he would not touch the testimony of witnesses. When in the original suit referred to above I gave him a short summary of what the witnesses on both sides had sworn to, he said ‘Let us leave our liars and their liars alone—let us go to the documents and the circumstantial evidence.’ And he never discussed ‘our liar’s and ‘their liars’ and won the case for the client on the document and the circumstantial evidence.

In 1908, I was taken down to Patna before the District Judge in a heavy original suit which involved some extremely difficult questions of fact and law. My opponents were the Advocate-General of Bengal, the late Mr. Umakali Mukerji and the late Mr. Gopal Chandra Sastri of Calcutta. I was naturally very nervous, and I suggested to the client that he might take a senior lawyer to lead me. Mr. Chaudhri was approached, he was not well enough to undertake the responsibility of conducting or arguing a heavy case like that; but he agreed to go there to give me the benefit of his advice on any question of law on which I might like to consult him. The client agreed. Mr. Chaudhri preceded us there a day earlier, as he wanted to avoid the night journey. The next morning I joined him at the Patna Dak Bungalow and there, for the first time, I gave him a very brief outline of the

case. He simply listened to me and expressed no opinion. At 10 he was ready to go with me to the court. Neither the client, nor I wanted him to put himself to the trouble of going to court but he said he would like to go. As soon as we reached the court, the case was called on, and up sprang on his feet Mr. Chaudhri, much to my consternation and to the consternation of my client and other lawyers; for we felt that he had not read the brief, did not know the pleadings or details. For forty-five minutes he addressed the court; and a more masterly, more lucid, more logical opening it has seldom been my lot to hear in all my professional life. My task had been made distinctly easy when I followed him. The Advocate-General came up to him during the midday adjournment of the court, and very courteously expressed his admiration of Mr. Chaudhri's eloquent opening. Eloquent he was, and no one else at Allahabad surpassed or even equalled him in sheer eloquence. His eloquence was however very different from a certain class of eloquence which is, to say the least, amusing in a court of law.

‘Dangerously Eloquent’

As Mr. O'Connor has said, he was a great literary purist. Master of a polished diction, he marshalled his facts in such an interesting manner, and he created such an atmosphere of sympathy around him by his simple, homely phraseology, by his telling delivery, that once Sir John Stanley described him so dangerously eloquent that he felt it safe to reserve his judgment until he was able to shake off the spell of his eloquence. He was the very soul of honour and courtesy, and I remember an occasion when, as his junior, I expressed my surprise that two learned Judges were not disposed to accept his contention which seemed to me to be so sound

and so well-founded in principle and authority. He said to me courteously—‘Don’t be surprised—there are two possible sides to the question. Perhaps they are right and I am wrong. In my case they are dispassionate.’ That gives some idea of his intellectual tolerance and courtesy.

A Contrast

Those were the days when one Indian judge on the Bench was as much as we could hope for. He practised for forty-three years or more at the Bar, his knowledge of law and human nature was unsurpassed, his sense of impartiality and fairness beyond question, his power of expression might have been envied by any one on the Bench in his day. And yet no one ever thought of putting him on the Bench. What a contrast between now and thirty or even twenty years ago ! If the passage from the Bar to the Bench had been so easy in those days as it is today, succeeding generations of lawyers might have cherished with respect the authoritative pronouncements of these giants of an earlier generation. As it is, we can only look back to those days as the days when these men raised the stature of the indigenous section of the profession, and we their successors have every reason to curb our vanity and to acknowledge the debt we owe to them.

A Man of Great Culture

Mr. Chaudhri had his own hobbies. Gardening and literature of the highest order were his favourite modes of relaxation, and he kept them up in his retirement. Passionately fond of the great masters of English prose and poetry, he was never tired of reading

them again and again. He was thus not a mere lawyer, he was a man of great culture which was reflected in his life as a lawyer and as a gentleman. He never felt drawn to public life. Only once for a very brief period did he think of going into the old Imperial Council, but it was a fleeting thought and he told me—‘Well, between me and politics there is a wide gulf.’ My own feeling is that it was his natural modesty or shyness which stood in his way and only if he had taken to politics he would have by his eloquence, selflessness and sanity of judgment enriched the public life of the country as he undoubtedly enriched the professional life. Do not however let us forget that every Indian, who, in his own sphere of life, rises to the highest pinnacle to which he can rise or be permitted to rise, whether he is a lawyer, a doctor, an engineer, or an administrator, or a journalist, or a social reformer, enriches our life, makes us feel proud of our present, and entitles us to claim a fuller and richer future. That Mr. Chaudhri was a great advocate is beyond question, that he was a greater gentleman we must acknowledge with pride, reverence and affection.



Pandit Sir Sunder Lal

By

SRI KAZI MASUD HASAN

Advocate, High Court, Allahabad

THE story of the first fifty years of the life of the Allahabad High Court is, by and large, the story of the genius of Pandit Sunder Lal as legal luminary—lawyer and jurist—of almost unsurpassed brilliance in the legal firmament.

Born in 1857, 9 years before the birth of the High Court, he entered its portals in 1881 and almost exclusively blazed the trail until the last two digits of the year of his debut in the 19th century, reversed themselves in the 20th—having met with rather premature death in the year 1918.

While yet an under-graduate, Pandit Sunder Lal passed the Vakil's examination of the High Court in 1880. He took his B. A.

degree from the Calcutta University in 1881 and started regular practice as Vakil soon after. He showed early in his college career that aptitude for hard work and regulated life which in later years accounted so much for his success in the exacting profession of Law. Sir George Knox whose connexion with Allahabad goes back to the seventies of the last century disclosed that Principal Harrison of Muir College—who is reported to have been a very shrewd judge of men—foretold a great future for young Sunder Lal, although, as is not unoften the case, the qualities which make for success in what has been said to be ‘the Great University of Life’ are somewhat different from those which secure brilliant academic honours. Pandit Sunder Lal possessed the former in super-abundant measure, and his entire career as a lawyer and a public man, bears witness to it.

Both the branches of the profession comprised at that time of some very eminent and able leaders. Men like Sir Walter Colvin, Mr. Conlan, Mr. Hill and Mr. Ross among the Barristers and Munshi Hanuman Prasad, Pandits Ayodhya Nath and Bishambhar Nath, Munshi Jwala Prasad, and Mr. Dwarka Nath Banerji among the Vakils occupied the front rank of the profession in those days and it was not so easy for Pandit Sunder Lal to assert his way up. In those hoary days, judgment-writers were also appointed from among those juniors who showed good promise of legal understanding. Two such appointments were made when Sir Cower Patheram, Kt. became Chief Justice of Allahabad High Court. These were Mr. (afterwards Sir) Arthur Strachey and Pandit (afterwards Sir) Sunder Lal. Between 1889 and 1892 Pandit Sunder Lal’s practice kept going up and when Pandit Ayodhya Nath died in 1892, he immediately shot up to the top of the profession. In the years that followed his name was a household word among the litigant public during that quarter of the century and there was scarcely any case of note in the High Court in

which his services were not eagerly sought for by one party or the other. He was a great case winner and the party whose briefs he accepted always felt confident of success.

It was in 1896 that in recognition of his great talents and position in the profession, the High Court raised him along with three other leaders of the Bar, to the rank and status of Advocate, an honour not bestowed before on any Vakil. During his long career he enjoyed the respect and confidence of the Judges in unbounded-measure, and as a retired Chief Justice once revealed to Sir Tej Bahadur Sapru, when Pandit Sunder Lal argued a case, it was felt that there was nothing more left to say on it.

His reading was not only very extensive and wide but also very deep and his knowledge of the case-law Indian, English, Irish and American, was almost unequalled. Whether he had to deal with an intricate point of Hindu Law or Mohammedan Law, the law of Mortgages, or the Law of Wills, the Law of Procedure, or Accounts or Company Law, he was equally at home with the subject and knew almost every important case on the point and every change in the Statutory Law or judicial decisions. But it would be a great mistake to suppose that he was a slave of the case-law. He possessed a firm mastery of the underlying principles of Law and the manner in which he adroitly applied those principles to the cases that he had to argue afforded great instruction to his juniors. His marshalling of facts was highly skilful. Indeed the marvellous lucidity with which he unravelled some tangled mass of facts and analysed the evidence, the resourcefulness which he showed in meeting the observations from the bench, the sense of perspective that he always displayed and the great knowledge that he possessed of human nature, extorted unqualified admiration and respect for him both from his colleagues as well as his opponents.

He had a persuasive manner and self-confidence born of knowledge and thorough preparation, for, above anything else, what distinguished him in life, either as an advocate or as a public man, or as a Judge, was his thoroughness. He was one of the few in India who had attained that complete knowledge of Irish and American Law which is so much sought after now. He had full acquaintance with the rulings of Sadar Divani Adalat and other case-law of East India Company's time.

In a case relating to theft of electricity Panditji cross-examined one of the top Electrical Engineers of the country after a thorough study of the entire electrical system. After the cross-examination was over, the Engineer remarked that Panditji knew as much about electricity and its distributary system as he himself.

Strict professional probity was an article of faith with Pandit Sunder Lal almost at par with his strong religious faith. To illustrate his scrupulous professional behaviour the following incident was often narrated by Sir Tej Bahadur Sapru :

Once Sir Tej Bahadur Sapru wanted to brief Pandit Sunder Lal in a murder case. A prominent Rais who was also a lawyer was involved in the case and Sir Tej Bahadur Sapru wanted Pandit Sunder Lal to accept the briefs but he refused to take it up as he did mostly civil work. The client insisted that he would like to be defended only by Pandit Sunder Lal, and he offered a very fabulous fee as retainer. The case created a big sensation at the time. On great persuasion of Sir Tej Bahadur Sapru, Panditji had to accept the brief. The case resulted in the acquittal of the client but the two cheques for a large amount offered through Sir Tej Bahadur Sapru to Pandit Sunder Lal remained uncashed on the ground that no fee could be taken from a brother lawyer.

There are many episodes preserved in admiring recollection by the contemporaries of Pandit Sunder Lal depicting the enormous labour, deep thinking and great tact and inimitable professional integrity which he brought to bear in the discharge of his duties towards his clients that have descended down to us. They are too many to be re-counted here but it will not be out of place to reproduce an extract from the Resolution passed at an emergent meeting of the Vakils' Association on the 16th of February, 1918, on his death. This will give a glimpse of the high place he held in the estimation of his colleagues at the Bar.

“ During a long career at the Bar extending over 38 years, he achieved a distinction never surpassed by any other member of the profession. His deep erudition, his wide culture, his rare gift of advocacy, his honourable conduct as an Advocate, his genuine regard for his colleagues and his unfailing courtesy to one and all, won for him a unique position in the estimation of his colleagues at the Bar, the litigants at large, and the members of the Bench. In his death, the Association loses its brightest jewel and the legal profession a member of the greatest distinction.”

His qualities were not of the showy or spectacular order, which strike one instantaneously. He had none of the grand manner, the glowing periods, and the epigrammatic liveliness of the Oxford Union. His address was quiet, respectful and confident. The remarks of Lord Bryce anent the advocacy of Cairns that it was “broad, massive, convincing with a robust urgency of logic which seemed to grasp and fix you, so that while he spoke you could fancy no conclusion possible, save that towards which he moved” very aptly applied to Pandit Sunder Lal also.

It was in 1909 that he accepted a seat on the Bench of the Judicial Commissioner's Court at Lucknow for a few months and in

1914 and 1916 for brief periods officiated as a Judge of the Allahabad High Court and incidently he was the first Indian Advocate to be so appointed. During this brief space of time he won golden opinions of every one and some of his judgments bear eloquent testimony to his vast learning and remarkable thoroughness. His devotion to law won for him a unique position. His profound learning, wonderful memory and intimate acquaintance with the case-law was proverbial and his wide range of reading, his firm grasp of principles, his mastery of detail, dogged determination to dig down to the root of tedious and complicated points, his untiring industry and power of concentration, his wide sympathy and his innate sense of justice made him a great judge.

With all his kindness of heart, he could not put up with unpreparedness on the part of counsel and more than once put back a case to compel him to master the facts. He felt this shortcoming keenly although he never showed it by anything but a kind and persuasive word or two. With all his gentleness he was strong and firm of purpose and he knew how to insist on a point when his mind was made up. No man could have reached the heights he attained without an iron will and though everything seemed to come easily to him, he could never have achieved such eminence without having first gained mastery on his own self.

Public activities : Educational and political

No account of Pandit Sunder Lal's life can be complete without a mention, however cursory, of his public activities—educational and political.

In 1893, Pandit Sunder Lal was appointed a member of the Board of Law Examination for Vakils at Allahabad. In 1895 he

was appointed member of the Syndicate of the Allahabad University. He was member of the Committee which organised relief in different parts of the Province during the famine of 1897. The Macdonald Hindu Boarding House now known as Madan Mohan Malviya College, the Red Cross Society, the City A. V. Intermediate College, the Crosthwaite Girls' College and a very large number of other institutions owe a lot to him for his advice and financial help.

He was indeed a great educationist and a front rank public man. No one in his generation occupied the same position as he did in the internal affairs of the Allahabad University. By solid work unostentatiously performed he rose to be the Vice-Chancellor of that University in 1906, and was incidently the first Indian to be so appointed. He again held that office in 1912 and yet again in 1916. His main work was done in the Syndicate and the Faculties where his intimate knowledge, his clear-sightedness, his keen appreciation of practical issue frequently turned the scale in the midst of a conflict of arguments.

The distinction of Rai Bahadur was conferred on him in 1950, and the title of 'C. I. E.' in 1907, and later he was Knighted.

When he accepted the office of Vice-Chancellor of the Benaras Hindu University, he fully justified the feeling of every one at the time that in the critical years of its infancy, his great experience, his wonderful patience with critics friendly and hostile, his transparent sincerity of purpose, his influence with the Government, the princes, and the people, his devotion to the cause and above all, his faith in its future, would be assets of the greatest possible value to it—even more than the munificent gifts and donations to the funds of the University from him and other members of the family which ran into several lakhs.

Although his professional work demanded a good deal of his attention, he did not, in the performance of his duties as a public man associated in various capacities with a large number of institutions, spare either time, money or energy. Everything which he undertook to do was done by him cheerfully and ungrudgingly.

For nearly 14 years of his life, he was a member of the Provincial Legislative Council and for sometime he sat in the Imperial Legislative Council to assist at the time of passing of the Hindu University Bill.

He appeared as a witness before the Decentralisation Commission and also before the Royal Commission on Public Services. He supported and advocated ardently many of the reforms which his countrymen are enjoying. He possessed a most disciplined intellect ; he had not the fiery temperament of a restless politician. He had ideas and ideals but he would march with care. His position in the politics of the country has been best defined as “a constructive statesman and a patient idealist”.

The Man

Sri Sunder Lal was a student all his life. His intellectual interest encompassed a very wide range. During his career as a college student, he was devoted to chemistry but subsequently developed a remarkable fondness for history. His reading was of the most varied description. In private life he was gentle and courteous to everyone, high and low, willing to help where help was needed, singularly free from all show and pomp—the very soul of honour in business. a practical moralist whose life was a life of purity and character. It is men of his type who by their public work and private life, intellectual attainment and stainless

character raise the level of the nation. Honours came to him thick and fast from every quarter, but he never yearned for them. His worst critics could not accuse him of being a self-seeking person. He was equally loved and respected both by the people and the Government.

Of him it could be truly said in the words of the poet :

On his unembarrassed brow

Nature had written 'Gentleman'.



Pandit Moti Lal Nehru

By

SRI N. D. OJHA

Advocate, High Court, Allahabad

PRINCE among men, Pandit Moti Lal Nehru was born on May 6, 1861 at Agra. The ancestors of Pandit Moti Lal Nehru, were Kaul Brahmins and residents of Kashmir. Impressed by the scholarship of Pandit Raj Kaul, King Farrukhsiyar brought him to Delhi in about 1716 and granted a house to him for his residence by the side of the canal which used to run through the heart of the city known as Chandni Chowk. As a result of their residence on the bank of the canal or *nahar* the descendants of Pandit Raj Kaul became known as Nehrus. Pt. Raj Kaul's grandson was Pt. Mausam Ram Kaul whose son Pt. Laxmi Narayan was the first Vakil of the East India Company at the Mughal Court, Delhi. Pt. Ganga Dhar, son of Pt. Laxmi Narayan was a Police Officer in Delhi and as a result of the Indian War of Independence of 1857, he had not only to lose his service and other belongings but had to shift to Agra along with his wife Srimati Jeorani and two sons Banshi Dhar and Nand Lal. Pt. Ganga Dhar died

at a premature age of 34 years and after about three months of his death Srimati Jeorani gave birth to Moti Lal. At that time Srimati Jeorani was financially hard up and Moti Lal had not the privilege unlike his illustrious son of being born with a silver spoon in his mouth.

Moti Lal was brought up by his elder brother Nand Lal (grandfather of R. K. Nehru). After having been given lessons in Arabic and Persian in his childhood, Moti Lal received English education and took to the profession of law like his elder brother Nand Lal.

He topped the list in the Vakils' Examination and started practising law in 1883 at Kanpur under the apprenticeship of Pandit Prithvi Nath. Three years later, in 1886, Moti Lal shifted to Allahabad and started his practice with his elder brother Nand Lal. At the very threshold of his career Moti Lal was destined to shoulder the responsibility of a big family. Pt. Nand Lal died in 1887 at an early age of 42 years leaving his wife and five sons to be looked after by Moti Lal. His first wife and the son born of her having died, Moti Lal married Srimati Swarup Rani and was blessed on November 14, 1889 with the son who rose to be the first Prime Minister of India.

Moti Lal had a phenomenal rise in the profession of law and while still in his thirties his income rose to be about Rs.2,000 per month and by the time he crossed his forties it had reached five figures. What goes more to his credit is that to reach the heights which he did in the profession of law, Moti Lal had to march through a galaxy of giants of the Bar like Sir Walter Colvin, T. Conlan, C. H. Hill, G. T. Spankie, A. Strachey, Dillon, Sir Charles Ross Alston, Munshi Hanuman Prasad, Munshi Jwala Prasad, Pt. Ajodhya Nath, Pt. Bishambhar Nath, Sir Sunder Lal, Mr. Jogendra Nath Chaudhari, Munshi Ram Prasad, Mr. Dwarka Nath Banerji and Babu Durga Charan Banerji. In recognition of his merits the then Chief Justice Sir John Edge for the first time since the establishment of the High Court admitted Pt. Moti Lal to the roll of advocates of the

Allahabad High Court in 1896 along with Pt. Sunder Lal, Mr. Jogendra Nath Chaudhari and Munshi Ram Prasad and in 1909 he received permission to appear and plead before the Judicial Committee of the Privy Council. Moti Lal was not only a shrewd lawyer and incisive in argument but also possessed in abundance a strong commonsense. He was a good debater and had a gift of persuasive advocacy. He was a staunch friend and a straightforward opponent. Being full of humour and a man of ready wit he commanded the admiration of the Bench and the Bar alike. Above all he was very industrious and conscious of the fact that there was no short-cut to success in the profession of Law. In one of his letters to his son who was then at Harrow Pt. Moti Lal wrote—

“To my mind it is simple enough, I want money. I work for it and I get it. There are many people who want it perhaps more than I do, but they do not work and naturally enough do not get it.”

Moti Lal had handled numerous important cases of big Zamindars and Taluqdars. One of such cases was the *Lakhna Raj* case of district Etawah which came to him in 1894 and remained with him for over thirty years till ultimately his client succeeded from the Privy Council where Moti Lal went and conducted the case. In the concluding phase alone of this case Moti Lal received a fee of Rs. 1,52,000. It was in regard to this case that Sir Grimwood Mears the then Chief Justice had observed that no man at any Bar in the world could have done that case better than Pt. Moti Lal Nehru.

The facts of this case are that Raja Jaswant Rao of Lakhna, district Etawah had a son Rao Balwant Singh by his senior wife Rani Ratan Kuar. Not being satisfied with the character of Rao Balwant Singh, the Raja disinherited him and subsequently by a conditional deed of gift he conferred his estate upon his junior wife Rani Kishori. Rao Balwant Singh fought without success for the estate up to the Privy Council.

Rao Balwant Singh had three wives, Srimati Naraini Kuer, Srimati Kaithiwali and Srimati Dunaju. After Rao Balwant Singh's death, Nar

Singh Rao claiming to be the son of Rao Balwant Singh and Srimati Dunaju filed Suit no. 131 of 1916 against Rani Kishori and her daughter Beti Mahalaxmi Bai as also against Srimati Rameshwari Devi, widow of Raghubans Rao son of Beti Mahalaxmi Bai to recover the estate which was the subject-matter of the deed of gift aforesaid. Written statements were filed in this suit under the signatures of both Moti Lal and Jawahar Lal and Moti Lal appeared in this case from that stage up to its conclusion by the decision of the Privy Council on 31st January, 1928. The main defence to the suit was that the plaintiff was not the son of Rao Balwant Singh. In the alternative, it was pleaded that even if a contrary assumption was made, the plaintiff was not entitled to any part of the property by virtue of the terms of the deed of gift aforesaid which had the effect of conferring an absolute interest on Rani Kishori in the properties comprised therein.

In the trial court, the case was conducted by Tej Bahadur Sapru for the plaintiff and Moti Lal for the defendants. The defendants' case was that Srimati Dunaju had never given birth to a child. In spite of persistent efforts having been made on behalf of the defendants, Srimati Dunaju refused to submit to medical examination on one pretext or the other and the suit was ultimately dismissed. The plaintiff filed an appeal in the High Court at Allahabad and a futile effort was made at the appellate stage also to get Srimati Dunaju medically examined. The appeal was dismissed and Nar Singh Rao appealed to the Privy Council where he made an application that his mother was prepared to get herself medically examined. This application was allowed and Dr. Vaughan Sawyer and Dr. Miss A. Louise McIlroy were nominated by the Board to examine the lady, who examined Srimati Dunaju and certified her as having given birth to a child. Their Lordships of the Privy Council on July 26, 1926 ordered the High Court to reconsider the whole case accepting the correctness of the certificate if the High Court was satisfied about the identity of the lady who was medically examined as aforesaid. The identity of the lady who got her examined was

not challenged and the High Court expressed its opinion that the suit was liable to be decreed except for a portion of the properties in suit. Moti Lal along with Sir John Simon appeared in the Privy Council for the defendants-respondents and even after accepting that the plaintiff was the son of Rao Balwant Singh his appeal was dismissed on the alternative case taken by Pt. Moti Lal in the written statement that even if the plaintiff was the son of Rao Balwant Singh he was not entitled to the estate on a correct interpretation of the deed of gift aforesaid.

Moti Lal was a good cross-examiner and was known for his repartee. He was once cross-examining a stiff-necked high Military Officer and while he was putting some preliminary questions which appeared to the witness to be superfluous he asked Moti Lal "Do you think me to be a fool?" and promptly came the snub "Of course not. But perhaps I may be mistaken".

At another occasion while he was addressing a jury and impressing upon them not to get confused, the Judge observed "Never mind the jury, the jury can look after itself". And quick was the reply "My Lord that may be so, but I want it to look after my client".

Some of the other important cases conducted by Moti Lal, were the *Tamkobi Raj* case at Gorakhpur, *Amethi Raj* (Sultanpur) case at Lucknow, the *Dumraon* case at Arrah in Bihar and the *Kayastha Pathshala* case.

In the *Dumraon* case Sir N. N. Sirkar a leading barrister from Calcutta appeared with him and the famous Mr. C. R. Das appeared for the opposite side. Having watched the manner in which Moti Lal conducted this case Mr. C. R. Das is reported to have told Mr. N. N. Sirkar that he would any day deem it an honour to work as Pt. Moti Lal's junior.

Chief Justice Sir Courtney Terrell of the Patna High Court was so impressed with his argument in the famous "The Searchlight case" that he spoke very high of Pt. Moti Lal to the Maharaja of *Darbhanga* and thus was Moti Lal engaged in the *Darbhanga* case.

Moti Lal earned a lot of money. At one stage during the struggle for freedom it occurred to Jawaharlal Nehru that he was doing nothing to earn a livelihood and when Moti Lal came to know about it, he affectionately told him not to be distracted from his goal on account of money and the reason given by him was that it would not be possible for the son to spend even in a year what the father would easily earn in a week.

Moti Lal was known for his princely style of living and enviable hospitality. He had a love for the latest and the best. He started his career from a house located in the heart of the city of Allahabad but soon found the environment not to be congenial and shifted to 9, Elgin Road, in the Civil Lines. In 1900 he purchased from Kunwar Parmanand a house opposite the Bharadwaj Ashram and renovated it to his choice. This house was previously owned by Mr. Justice Mahmood. The famous poet "Akbar Allahabadi" had named his house as "Ishrat Manzil" and on being asked by Pt. Moti Lal to suggest a name for his house, he suggested "Anand Bhawan" both connoting the same meaning—the Abode of Bliss.

Later when Moti Lal entered politics he renamed this house as "Swaraj Bhawan" and gifted it to the Indian National Congress and the munificent gift was accepted by the then Congress President who happened to be his own son Jawaharlal. Moti Lal constructed another mansion adjacent to his former house for his own residence which is now known as "Anand Bhawan". He was the first citizen of Allahabad to own a car which he imported in 1904. Moti Lal placed his reputation much above money as would be clear from a very apt illustration. The Raja of Amethi having won his case referred to above offered a lakh of rupees to Pt. Moti Lal. Instead of accepting such a huge sum Moti Lal asked the Raja to wait till his emotion of victory had subsided. Subsequently, the Raja expressed his desire to pay Rs. 25,000 cash and settle a few villages yielding an income of about Rs. 6,000 per year on his son Jawaharlal. Pt. Moti Lal again refused the offer and the reason for doing so as explained by him to his son

was that had he accepted the offer he would have been condemned behind his back and his reputation which he valued most would have suffered. Shakespeare truly said :

*“The purest treasure mortal times afford,
Is spotless reputation ; that away,
Men are but gilded loam, or painted clay.”*

His contempt for money becomes apparent from the following quotation from a letter written by Moti Lal in 1920 to a very respectable client on his expressing some difficulty in regard to payment of fees :

“No man in his senses can for a moment doubt the Supreme Contempt I have always had for money. My whole life is an illustration of this. I have so far been sought by it and have now forcibly closed my doors in its face.”

It may be recalled that Moti Lal had by 1920 given up his active practice and had plunged into the struggle for freedom.

Moti Lal was very affectionate to the members of his family and his love for his son knew no bounds. The manner in which Jawaharlal was bred and brought up and the education which Moti Lal gave him could be a matter of envy even for a prince. On July 26, 1907, the father is reported to have written to his son who was then receiving education in England the following words of advice and blessings “Go on working, my dear boy, as you have been—good, solid, steady work, interspersed with a fair amount of recreation, amusement and exercise—and you will shine out as one of the leading lights of your time”. There can be no manner of doubt that the son respectfully acted upon the advice of his father and made himself worthy of his blessings.

Moti Lal's two daughters Sarup (Srimati Vijai Laxmi) and Krishna had a similar paternal affection showered upon them which has held them in good stead in the later years of their life. Moti Lal's affection for his only grand-child whom he called Indu was again unique and it seems that

the impact of the personality of the grandfather (Dadu) upon Indu was greater than of her father (Papu). How proud would the grand old man have been, had he lived to see his little Indu as the Prime Minister of India.

Even though Moti Lal did not have any idea of entering active politics, he was by force of circumstances brought into it, but once having entered it he put his all at the disposal of the motherland.

"For our sakes, without question, he put from him all that he cherished.

Simply as any that serve him he served and he perished.

All that Kings covet was his, and he flung it aside for us.

Simply as any that die in his service he died for us".—Kipling.

His position as a political leader came to be recognised second only to Mahatma Gandhi. Nearabout the beginning of the present century, the Indian National Congress happened to be divided into two groups known as Moderates and Extremists and at times a great tension prevailed between them. In the beginning of 1907 a suggestion was made to Moti Lal in a meeting held at Anand Bhawan to have a U. P. Provincial conference of the Congress organisation to be presided over by him. Moti Lal was reluctant but had ultimately to accept the honour of presiding over this conference. Moti Lal was influenced in his political career to a great extent by Gokhale. Subsequently he fell under the spell of Mahatma Gandhi and the relationship between Sabarmati and Anand Bhawan throughout remained very cordial.

Moti Lal started his political career as a Moderate but in his later days partly under the influence of his son and also because he was angered at the attitude of the then Government he bade good-bye to the "Moderates". In 1910 he was elected to the Provincial Council. Later on he was elected leader of the Swaraj Party in the Central Legislative Assembly and was considered to be one of the foremost parliamentarians and an outstanding

leader of marked capacity. The speeches of Moti Lal inside the Legislative Assembly and his addresses as President of the Indian National Congress in its sessions at Amritsar and Calcutta are master pieces. Moti Lal had to serve imprisonment several times in the cause of the motherland and his first imprisonment took place on December 7, 1921, when he was arrested at Anand Bhawan along with his son and is reported to have given the following farewell message to his countrymen: "Having served you to the best of my ability, it is now my high privilege to serve the motherland by going to gaol with my only son."

A description of Moti Lal's personality would certainly be incomplete without referring to his high sense of humour. He was universally loved and admired for his wit and humour. It is not possible to give detailed description of this part of his make-up in a short space and it will suffice to give just one illustration of his sense of humour. On the eve of his departure from Simla after walking out from the Legislative Assembly, as leader of the Swaraj Party in pursuance of the mandate of the Kanpur Congress, an extraordinary and amusing address was presented to him by a group of distinguished ladies on September 18, 1926, in the following terms :

To Pt. Moti Lal Nehru, M. L. A., Leader, Swaraj Party.

On the opening day of Legislative Assembly, we the petitioners belonging to the superior sex looking down from the heights of Heaven were much grieved to behold the worthy leader of the Swaraj Party bereft of his moustache and shed many tears. The petitioners consider that the leader of the Swaraj Party has been guilty of destroying one of the beauty spots of the nation by this sacrilege. By this ruthless act the Assembly hall looked denuded of its best ornament as does the Divan-e-Khas without the peacock throne.

The petitioners consider this act on the part of the leader abovenamed to be a bad example to the other members of the Assembly. They fear that the other members may likewise take it into their heads to destroy other beauty spots . . .

The undersigned petitioners hereby beseech Pt. Moti Lal Nehru and pray to him on bended knees to allow the down like beautiful sumbal tresses to adorn his face once more and thus restore one of the greatest national monuments before the dawn of another year. (Names of signatories omitted).

Pt. Moti Lal Nehru was, as might be expected, equal to the occasion and replied to the members of the superior sex in the following terms :

“Mrs. Bhola Nath and others of the superior sex :

I am obliged to you for the address that has just been read. I shall treat it as valued souvenir and it shall go to my children and children's children as an heirloom so that they may learn by the mistakes of their ancestor. You have placed me in a great difficulty. My sense of chivalry extends to the whole of the superior sex and I know there are those in it who admire me and not merely my late moustache. It is impossible for me to say at the present moment what the result of the plebiscite of the whole sex will be. While I appreciate the whole sentiments you have expressed I must find means to consulting those who have not signed this address. Being accustomed to the procedure in the Assembly I can only think of the very familiar motion that the bill be circulated for opinion. Meanwhile I promise you that it will have my earnest consideration. (Here Sir Mohammad Shafi whispered something to the speaker who continued). My friend Sir Mohammad Shafi who has not yet shaken off the dust of office suggests another official formula and I gladly accept it. It is that I shall grow my moustache again if it is necessary in the public interest. I hope this will satisfy you. I thank you again for the interest you have taken in my moustache. I hope I shall live to interest you in me as I am.”

The principal hobbies of Moti Lal were wrestling and *shikar* and to know his religion, we have to turn to Thomas Fuller's adage “A good life is the only religion”.

On the passing away on February 6, 1931 at Lucknow of such a

great advocate, politician and patriot and above all 'a finished gentleman from top to toe,' the country was plunged in deep grief and innumerable condolence resolutions were passed and references made on this occasion including a full court reference in the High Court. Speaking on that occasion on behalf of the Advocates' Association Sir Iqbal Ahmad said :

"My Lords, it was my privilege to work as a junior to Pt. Moti Lal and I can say without the least fear of contradiction that he stood on footing of his own and occupied a unique position in your Lordships' Court. A lawyer of the keenest intellect, a brilliant advocate, a consummate cross-examiner who was equally at home both in original and appellate work, it was a pleasure to hear him argue a difficult case either on facts or on law. My Lords, I can say without exaggeration that I have not come across during my experience a greater advocate or a more brilliant lawyer. Truly he was one of the giants of the profession. People like him raise the status and the dignity of the profession.

My Lords' he has died full of years and full of honours. But his death will be mourned by all who admire greatness in man and goodness of heart. The world is the poorer today than it was yesterday in culture, in refinement, in ability and in learning."

And the Chief Justice Sir Grimwood Mears observed: "With his wide range of reading and the pleasure that he had taken in travel he was a very delightful private companion and wherever he sat at a table there was the head of the table and there was the centre of interest. He has left behind a very great reputation in this court and his name will always be associated with this Court and be one of the traditions of this Court."

In the words of Wordsworth it can truly be said of him :


*"Yet shall thy name, conspicuous and sublime,
Stand in the spacious firmament of time,
Fixed as a star."*

Munshi Ram Prasad

By

SRI SHAMBHU PRASAD

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FTER the annexation of the Punjab, which, despite the myth of hard-fought battles, was never conquered, but was a gift to Dalhousie, the author of the infamous doctrine of lapse by the Phulkean States, headed by Patiala and assisted, in this perfidious game by Gulab Singh, the ruler of Jammu, a fresh revenue settlement was considered necessary. Some Indian officers of outstanding merit, with a special knowledge of revenue law, were sent to the Punjab. One such officer was Munshi Madho Prasad, who was then a Deputy Collector in these provinces. He served there with great distinction. He belonged to Allahabad. He was the father of three sons, Ajodhya Prasad, Kamta Prasad and Ram Prasad. The first two, like their father, became Deputy Collectors. The third, the subject of this sketch, was offered the same post, which was then the summit of an Indian's ambition. But he chose the legal profession. He qualified himself as a Vakil and settled down at Allahabad, his home town. He started practice in the district courts. He soon picked up a good practice both on the civil side and criminal. Those were not the days when a young man had to "luxuriate in a briefless existence" and wait long; but, even as it was, his success was almost phenomenal. He caught the eye of Mr. Knox, later Sir George Knox, an Englishman of large and liberal sympathies, who was at that time

the Small Cause Court Judge, Allahabad, a post then reserved for the members of the I. C. S. Mr. Knox secured him the post of the District Government Pleader, which then was a very coveted office, both for its emoluments and its dignity. It meant not only the titular, but also the *de facto*, leadership of the Bar. Unlike today, when merit is not the only, even the principal, test, the best men at the Bar used to be selected for the office. He had already made his mark as a very astute lawyer with a commanding practice on both sides and his choice was not unexpected. He, it was a foregone conclusion, eminently justified it. He was, after a year or so, the undisputed leader of the District Bar. After a few years, Sir P. C. Banerji was appointed to succeed Mr. Knox, who was elevated to the office of the Legal Remembrancer, a post then marked out for members of the I. C. S. of outstanding merit and ability. Sir P. C. Banerji was the first Indian to hold that office. He too formed a very high opinion about Munshi Ram Prasad. Then followed an event, unique in the annals of judicial appointments.

Munshi Jwala Prasad, who was the Government Pleader, High Court retired. The post was, according to tradition and practice, expected to go to one of the leading and senior practitioners of the High Court. But, to the surprise of all and disappointment of a few, it went to an unknown—at least in the High Court—young man, who was a stranger to the High Court. Mr. Knox, who, as said above, had formed a very high opinion about the subject of this sketch, was then the Legal Remembrancer. The office was virtually in his gift. He straightaway appointed him Government Pleader, High Court. It was a serious disappointment to the candidates and aspirants for the office and attempts were not wanting to make his task difficult. But, so well did he adapt himself to his new environments and so conspicuous was his success, that, in the very first case he argued for the Crown—it was a Government appeal from acquittal in a murder case, in which the Government Advocate had somewhat hurriedly

and unexpectedly passed on the brief to him—he was openly and highly complimented by Sir Douglas Straight, one of the ablest Judges, Allahabad ever had.

But, in the case of Munshi Ram Prasad, the rubicon was crossed and, within a few years, he shared the leadership of the Bar, on the civil side with Colvin, Conlan and J. N. Chaudhri. Sunder Lal, though he had joined the High Court earlier, came after him. Moti Lal Nehru was also rapidly forging ahead. On the civil side, among the Barristers, was another very gifted young man, Strachey who was also making very rapid strides both as a civil and criminal lawyer. As Government Pleader he had to encounter Sir Walter Colvin who was at the top also on the criminal side, Strachey till his appointment as Government Advocate when Hill was raised to the Bench at Calcutta, Charles Coleman Dillon, Ross Alston and Chamier. Later Strachey went to Bombay as a puisne Judge and returned to Allahabad as its Chief Justice. Chamier succeeded Strachey, then he went to Lucknow as the Judicial Commissioner, returned to Allahabad as a puisne Judge and finally went to Patna as its first Chief Justice in 1915. What a galaxy of names ! I had heard Dillon and Alston and Moti Lal Nehru too, once or twice. When I think of the forensic encounters of these giants, I find myself in the wonder-land. Would that those spacious days could come back ! Then could we proudly say, what was said of those days that what the Bar thinks today, that the rest of the country thinks tomorrow.

When my father entered the profession he straightaway joined the Chamber of Munshi Ram Prasad. Father used to tell me amazing stories of the intellectual gifts of his senior. He was an all-rounder, a great advocate, a perfect draftsman, a first rate case builder and a brilliant cross-examiner. He could pick up the brief in no time, however complicated the facts or heavy the brief or difficult the questions of law. There was something Napoleonic in his mental equipment. Napoleon, they say, could do several things at a time. Munshi Ram Prasad could, it is said, attend to

a number of his manifold activities at one and the same time. His arguments were short, pithy, effective and left nothing to be desired. He was, for this reason, a special favourite of the Judges. Father used to say that at Allahabad Sir Walter Colvin alone could be mentioned in the same breath with him. Both excelled in every branch of the law and in every phase of an Advocate. Later in life I pointedly put it to Dr. Tej Bahadur Sapru, Mr. Satya Chandra Mukerji and Munshi Haribans Sahai. They all agreed, but Dr. Sapru added a rider. To him Conlan, Colvin and Ram Prasad stood on the same footing. But, be it noted, that Conlan was an exclusively civil lawyer.

He was one of the four successful advocates whom Sir John Edge, for the first time since the establishment of the High Court, raised to the status of an advocate in 1896. It was a bold step of great imagination and, at least in some measure, heaved down the barrier of ages. The other three were J. N. Chaudhri, Sunderlal and Moti Lal Nehru. There was hardly an important case in which he did not appear. He remained at the top till the end.

He was a man of versatile activities. He took a keen interest in the educational problems of the country. He was the President of the Kayastha Pathshala, then too, one of the foremost educational institutions of the Province. Its founder, Munshi Kali Prasad, was one of the leaders of the Lucknow Bar. Its first and life President was Munshi Hanuman Prasad, one of the leaders of the Allahabad Bar. After the latter's death the crown was placed on the head of Munshi Ram Prasad and a more deserving choice could not be made. Cassandras were not wanting who predicted a dismal future, because, they argued, his hands were already too full. But, they all turned out false prophets. To his massive mind the fresh responsibility hardly meant an added burden. The institution made enormous strides during his regime.

If a slight digression is permissible, Satish, before he formally joined the legal profession had to acquire distinction of sitting at the feet of the

peerless Mahmood, as before him, Sir Arthur Strachey had done. Strachey and Satish were Mahmood's greatest pupils. To Munshi Ram Prasad and Munshi Ram Prasad alone did the Kayastha Pathshala owe its distinguished position. If Munshi Kali Prasad founded it and Munshi Hanuman Prasad nursed it, it was during his regime that it flowered into something unique.

He was a deeply religious man. The magnificent temple built by him and known after his name, with its lawns and other accessories, in the heart of the town, is a monument of his devotion to his faith. Most of his time, both morning and evening, was occupied with his religion. In the morning, he hardly gave an hour to his profession or to his other activities. His programme in the evening was characteristic of him. After return from court, after a short rest, he would go with my father to his temple. Some times I also accompanied him. Learned Pandits, Sadhus and religious divines of other persuasions too, would gather and hold discussion till late in the evening. I was too young to follow anything except this that even in that august assembly he was like a "tall cliff" that dwarfed the rest.

Even as a young man he was sedate like Milton, whose

"Pleasures were of crimeless kind,

That ne'er taint the soul".

One phase of Munshi Ram Prasad's character has always to be emphasised. No junior in need approached him in vain. Preference may be made to one case in particular. Munshi Ram Prasad assisted by my father argued a heavy First Appeal from Aligarh for the appellants and convinced the Judges in his favour. Mr. Conlan, replying for the respondent, cited in his favour an English authority. Sunder Lal had brought out the case, after great deal of research, Conlan succeeded in almost turning the scale. My father as though instinctively, rushed up to Dr. Satish Chandra Banerji, who though still very young, had made his mark for scholarship. Satish gave father a later English authority dissenting from the earlier one. The table turned and Munshi Ram Prasad won. The client paid a heavy amount on account

of what is technically called *shukrana*. Munshi Ram Prasad directed father to pass on the entire amount to young Satish. The latter declined, but was ultimately prevailed upon to accept it. I know of only such instance. Placed in similar circumstances, Mr. W. C. Bannerji gave the entire sum to a young and obscure junior, who subsequently rose to unattainable heights—Satyendra Prasanna Sinha, later Lord Sinha.

It is not surprising that he was not only respected, but also loved. On the death of Hallam, Tennyson said :

“If all the world had known the heart
I would deem the praise he had it
yields, Scanty.

When Ram Prasad died, Sir George Knox, then Acting Chief Justice, spoke most feelingly :

“I deem it a privilege that it was given to me as Legal Remembrancer to appoint him Government Pleader of this Court. I am proud and happy to say that, at no moment of his life, did he disappoint the expectations I had then formed of him.”

A richer tribute to a lawyer could not be paid, never was it better deserved.

It was said of Sir Rash Behari Ghosh that men like him, by their very presence, raise the stature of the profession. So can it be said about the subject of this sketch. As I dwell, in my mind, upon his exalted character and noble heart, I feel that he possessed, what is essential for success in every sphere of life, that great virtue, which Morley ascribed to Mill, his preceptor and guide,

“Wisdom and goodness
and that rare union of moral
ardour with a calm
and settled mind”

and, I might add, that generous purpose to give the best of himself to every noble cause.

B. E. O'Connor

By

SRI HARI SWARUP

Advocate, High Court, Allahabad

FOR a period of a little less than half a century, people saw in the corridors of the Allahabad High Court, a sober and silent Irish Barrister walking with a slow and steady gait that showed neither worry nor anxiety. The big round head hardly looked out-of-proportion on the short but plump body of Mr. B. E. O'Connor. His broad forehead over the keen slim eyes hidden behind a pair of round glasses, indicated the depth of his study and learning and his clipped lips running across the face exhibited a confidence not possessed by many.

After being called to the Bar in 1892, O'Connor joined the Allahabad High Court in 1893, and without waiting long for briefs rose to a position of eminence. With a two-volume Civil Court Manual he would enter the court-room to do the cases prepared entirely by himself. He would watch his cases with an index card in his hand and argue them with notes written

concisely on a roll of paper wrapped round a hardboard.

Mr. O'Connor like Sir Rufus Isacs and Sir Marshall Hall was a great advocate of facts. His marshalling of facts was perfect, his presentation thereof effective and arrangement superb. He knew that law was like pure spirit which evaporates unless confined in the bottle of evidence and emits its true aroma and colour only when poured in the glass of hard facts. With his profound knowledge of the basic legal principles and the rudiments of law, he could mould and present the facts with a magnetism that would attract only the favourable propositions of law. It was this rare ability of marshalling the facts that made him the monopolist of the First Appeal work in the High Court.

O'Connor's success did not depend on the colour of his skin or the bulk of his body. He had to compete with the legal giants like Sunder Lal and Moti Lal Nehru, Satish Chandra Banerji and Tej Bahadur Sapru. According to Sir Tej, O'Connor owed his success 'not to any fictitious aid but to his sterling merits, incorruptible honesty and integrity' and what he considered to be a very necessary pre-requisite of a successful advocate, 'independence combined with respect to the bench'.

He was not an orator and his style was conversational. His control over language was so good that he never stood in need of enlarging the volume of his voice in order to make his words more emphatic or his reasoning more appealable. He never proceeded to the next argument till the first one had been properly injected into the mind of the Judge. O'Connor's words spoken slowly with confidence went straight to the ears of the Bench and his balanced voice could not be missed by the Judges who heard his steam-roller arguments. He was a master painter in words and the Judges hearing his running commentary on evidence must have felt that they were looking at a slow-moving picture of the whole case. He could present the case in its panoramic view and thus make it exceedingly effective and impressive. He believed neither in wasting words nor in being miserly about them.

O'Connor acquired the capacity for mathematical analysis, precision and geometrical arrangements from his father who was a well-known statistician of the Government of India. He applied this knowledge of arranging figures to the systematisation of the facts of his case and achieved marvellous results. He believed that the crux of every case lies in the facts on which it is based.

If O'Connor had to give advice to a young lawyer he would certainly have told him : 'know your facts, marshal your facts, project your facts,' instead of giving the traditional advice : 'know your facts, know your law, know your Judge'. In his office-room, O'Connor maintained a surgeon's table on which he performed operations of his briefs. He used to carefully dissect the whole case and then arrange his facts to give them a proper shape. The operations were generally successful and the finished pictures were mostly acceptable to those who heard the appeals. His control over facts was complete and they danced to his tune of law.

O'Connor's strategy of arguments can be illustrated by picking up and analysing any of his cases. In the case of Bishambhar Das *vs.* Govind Das reported in (1914) XII A. L. J. R. p. 552, O'Connor appeared for the defendant-appellant and opened the case : "The real question in the case is not whether according to the true construction of the Hindu Law and Usage a sea-voyage is permissible to a Hindu, or whether going to or living in foreign lands is an expiable sin. The subordinate judge has gone at great length into a discussion of this matter which is entirely beside the point. The issue does not arise in this suit, which is neither one for reinstatement to caste nor one for damages against the defendant for outcasting the plaintiff. The suit is purely one for damages for defamation by the defendant, the defamation consisting in the publication of the resolution of the Panchayat which was held on 19th January, 1910." He then critically analysed the evidence and built up the structure of his arguments entirely on the basis of facts. He pleaded that on the facts proved by evidence no case for the plaintiff was made out. He cited no text books and relied on no case law.

He was opposed in the appeal by a counsel of no less eminence than Satish Chandra Banerji accompanied by Tej Bahadur Sapru. The respondent's counsel started with the masterly exposition of law and quoted from Odger's 'Libel and Slander,' Spencer Bower's 'Actionable Defamation', Pollock 'on Torts' and Wrethimer's 'Law relating to Clubs' and cited in support of his arguments five English authorities and six Indian decisions. The whole argument was on a high legal plane and was studded with maxims and canons of law.

O'Connor in his reply, again emphasised the pleadings and facts as established by evidence in the case. But in order to give his arguments a colour of legality or out of sheer respect for the arguments of his great opponents he touched a few authorities.

Tudball, J., however, in the judgment of the court did not refer to any of the text books or authorities cited at the Bar. The Court accepted the case on facts as put by O'Connor and the propositions of law automatically flowed in favour of the appellant's case. The appeal was allowed with a remark that the suit was misconceived and as put by O'Connor, the issue whether a sea-voyage was permissible under the Hindu Law or living in foreign lands was an expiable sin did not arise in the case.

O'Connor was the most skilled brick-layer of his age. He worked with the bricks of legal evidence and used law only as mortar. He placed brick over brick till the whole structure came up. He knew that no house can be constructed with mortar alone and his phrase that 'a single brick cannot make a building' was too well known. As an architect he collected all his materials, made a plan of the whole structure and then went forward with the work up to its completion, using as little mortar as possible.

O'Connor ranked amongst the topmost advocates that this Bar has produced in its hundred years' life. He was the last of the galaxy of British barristers who played a leading part in the development of the free institution of the Bar on which has always rested the responsibility of maintaining the

Rule of Law. He had helped in bringing to our judicial system not only the British concept of unbiased justice, but also the British traditions of fearless advocacy. He did his best to infuse in the Bar of Allahabad, a feeling of independence and a firm belief in the power and supremacy of Law. It was also his constant endeavour to maintain and develop among the Indian members of the legal profession a sense of equality with the white people who ruled the country. By his action and behaviour, he annihilated all distinctions of class and colour and lived as a common member of the profession which knows no discrimination.

Speaking of O'Connor as an advocate, Sir Tej Bahadur Sapru said : "I have never known an opponent more fair and more courteous than O'Connor, nor a colleague more loyal and more helpful than heHis advocacy was of an unusual kind. He knew the ins and outs of his briefs, as very few people attempted to know. His arguments on facts particularly were most impressive. His judgment on questions of law was also sound."

What O'Connor said about the advocacy of Sir Charles Ross Alston can with equal, if not greater, propriety be said about O'Connor himself. "The outstanding feature of his advocacy was an absolute fearlessness combined with a power of expression which rendered clear the most intricate matters that he might have to deal with. With this he combined singularly his high standard of professional honour and integrity and no one through all the years that he appeared at the Bar can say that he deviated by a hair's breadth from the rules of the strictest professional propriety." This man with untarnished integrity never gave an opportunity to any client to complain that O'Connor had failed him. As a matter of principle he argued all his cases himself and that too never without a thorough preparation.

He was an intrepid advocate, who was never ruffled or excited, but always maintained his calm. 'No matter how keen the contest' said Justice Sir John Thom, 'no matter how strenuous the fight, he never at any time

exhibited rancour or ill-feeling ; and in the end of the day he maintained undiminished the respect and affection of all who knew him.'

O'Connor would have been shocked to sit in a supersonic jet plane darting with tremendous speed. He never liked to rush or go fast. Whether it was a court-corridor in which he walked or a court-room in which he argued or it was a road leading to the High Court, on which his contemporaries were speeding in their cars, he never went with high speed. He never argued fast, never walked fast and never used a fast vehicle but always rode his single-horsed brougham which kept a steady pace.

He was a man of unassuming habits. He believed that the acts of kindness should never see the light of day and that good be always done by stealth. His heart was full of 'the milk of human kindness' and he was incapable of anything suggestive of meanness. The best compliment which he would have liked to get was a recognition of the fact that he was a 'true gentleman'. And O'Connor amply deserved the compliment.

O'Connor lived a secluded life—a life without friends and foes, a life away from the hustle and bustle of society. He was devoted to the cause of his client and perfection in work was his only motto. He had few visitors and himself rarely visited any friends and made no exception in the case of his white colleagues. It is difficult to discover the cause of his social shyness ; may be, it was his devotion to work or the psychological make-up of his mind. His interest was confined to the characters in his briefs and did not extend to the people around him. Probably he considered discussions of things other than professional briefs, nothing better than conversation about weather, just a waste.

O'Connor in the evening of his life preferred not to keep a kitchen but dined in a hotel or at a friend's place. But there were neither too many hotels nor too many friends to necessitate a change. He needed a companion at the table but got none at his own. He lived a life confined to himself and nobody could know if he was internally happy or not.

His drawing room which was rarely visited by his colleagues and Judges, contained heavy wooden furniture to match his own form. There were also some pieces of curios showing his remote interest in art and antiquity. On the walls were hung a number of pictures, some of which were of landscapes and others contained portraits of persons who were not always decoratively, classically or sufficiently attired. The entire furnishing and the get-up of the house presented a general impression that it was the home of a person who believed in a life of labour, a life of contentment and a life of seclusion.

19, Thornhill Road was not a noisy place. The master lived alone in the house as he had no wife, but it did not have the silence of solitude. Birds, pretty and musical, throbbed the space with their exhilarating songs and charming presence. He loved chirping and dancing of birds and enjoyed their melody. In the backyard of his bungalow there were cages for coloured pigeons, speaking parrots, love-birds and robin redbreasts. In the spare time that he got, O'Connor sat down in his flowery green to enjoy their company and frolicked with smart flamingoes strutting around on their long legs with swinging necks and scarlet feathers.

After having lived for about 69 years a life of hard work, he passed away quietly on July 21, 1937, leaving behind him, for the generations to come, the memory of a glowing professional tradition and labour, fearless advocacy and unimpeachable integrity. He died with animosity towards none and charity towards all.



Dr. Satish Chandra Banerji

By

MR. JUSTICE GYANENDRA KUMAR

TO write about Dr. Satish is to re-open that glorious past of this Court which may perhaps never return. Few probably of the present generation of lawyers can have a perception of his true moral and intellectual dimensions. Indeed how little do we know of him, when there is so much to be known. Dr. Satish lived in an age of great contemporaries and most of them lived longer than him but whether their achievements would live longer than his is left to the judgment of posterity. Some of the notable figures in the legal sphere, who then seemed to tower, may have shrunk in stature with the passage of time, but the same is not our fear for Dr. Satish. The present is so different from the past that it is difficult to see it a part thereof, as a link in a definite, continuous chain of forms and traditions. That our vision has missed him is too obvious and perhaps a correct accusation against us. His message seems lost to us and if we still try to bring it to our ears, we fondly hope we shall not aberrate. As we glean

the account of his life, we find it one of perfect consecration, a life which had only intent study and learning as its portion, a life indeed unbroken in its course.

Satish Chandra Banerji was born on 20th June, 1871 at Agra. He was the second son of the Late B. Avinash Chandra Banerji, who was a Judge, Small Cause Court. The places where Dr. Satish received education were determined by the uncertainties of his father's transfer from place to place. He had his early schooling in the Government High School, Allahabad. The late Pt. Madan Mohan Malviya was then a teacher there—Dr. Satish being one of his students. On his father's transfer to Aligarh, he joined the M. A. O. College, Aligarh. In this institution assembled distinguished scholars to diffuse learning to their pupils, such as Sir Theodore Morrison, Prof. Wallace, Theodore Arnold and the distinguished Shakespearean, Prof. Raleigh. Of these, Prof. Wallace and Theodore Arnold evinced keen interest in Satish. It was their association that kindled in him a devotion to literature and philosophy. On his father's re-transfer to Agra, he joined the Agra College. The Principal there was a Scotch—Mr. Thompson, a profound scholar of philosophy. Satish had been barely a few months in his class, when Thompson saw in him the gleam of philosophic talent ; and with this discovery in his pupil, his interest in Satish became more intense, rather personal. The College library, as also the Principal's personal library, were left at the disposal of Satish. These years of his with Mr. Thompson saw the growing of the latent seed of philosophy in him to a fruitful flowering.

Mr. Andrews, a distinguished scholar of Cambridge was another professor who attracted Dr. Satish. In Prof. Andrews, Satish found a true guide for his literary pursuits and his study of Elizabethan literature and mid-Victorian poets under Prof. Andrews became

very profound. Shakespeare has been the endeavour of every literary critic but few of them have been able to see him truly. Some have seen him only through the spectacles of their imagination, while others only through that of their intellect, with the result that their delineation of the subject only leaves a legacy of paradoxes and contradictions. To say that very few scholars who have devoted themselves to the study of Shakespeare have had that exact and intuitive perception of him as Dr. Satish would be no exaggeration. In interpreting Shakespeare, novelty is its own condemnation. Shakespeare, as Dr. Satish saw him, was a poet of concrete things, deeply concerned with human nature—the same eternal joys and sorrows, virtues and sins of flesh, which not only the poet but the weaker mortals are also permitted to see. His commentation of the views of Gervinus on Shakespeare as a moralist was greatly acclaimed by Prof. Dowden who readily accepted his suggestions.

The academic laurels of Dr. Satish are really unique. In 1890 he sat for his B. A. examination in Allahabad and Calcutta Universities simultaneously and in both he secured a first class first, with honours in English Literature. While yet a student of M. A. class, he brought out an edition of Tennyson's 'Princess' with a most learned synthetical introduction. Again in 1892, he sat for his M. A. simultaneously in the Calcutta and Allahabad Universities and topped at both the places. In the same year he brought out a philosophical treatise containing the dialogues of Berkley with his critical introduction reviewing the history and progress of English idealism. Prof. Fraser, a reputed authority on Berkley, was so much struck by the merit of this work that he came to regard Dr. Satish as one of the greatest scholars on Berkley outside England. In 1892, on the death of his father, he took a professorial job in the Hugli College, Calcutta. There, he won the Prem Chand Rai Chand

Scholarship, which was the highest honour an Indian scholar could aspire for. His thesis on *Sankhya* philosophy received the acclamation of Max Muller, who, in his later work, has paid the highest tribute to the talent of Dr. Satish. His research on *Sankhya* philosophy has achieved its mission and has won many to the study of the sources of Hindu thought. With so rare a literary talent and the meditativeness of a philosopher in him, one naturally expected him to remain in the academic sacrum, but it is not always that the expected happens. It was the sphere of law and not the university which was to see the fulfilment of his destiny and perhaps with not less lustre.

Satish started attending Sir Frederick Pollock's Tagore Law Lectures on the law of fraud and misrepresentation. He appeared for the law examination and got the first position; but owing to shortage of his attendance, the gold medal could not go to him. So poignant was Sir Frederick's grief at this unkind cut that he persuaded the University to award a special medal to Dr. Satish as a tribute to his merit. In 1894, after passing the LL. B. examination from the Allahabad University, he started his professional career at Lucknow as a Junior of Saiyed Mahmood, who had just joined the Bar after his resignation from the Bench of this Court. Dr. Satish, by his acumen and assiduity, soon won the heart of Mahmood, who found in him a true intellectual companion. His stay with Mahmood was, however, not long and in 1896 he shifted to Allahabad permanently. After a few months' stay in the district courts, he was allowed by the Chief Justice, Sir John Edge, to practise in the High Court. His first few years in the High Court were the years of usual waiting. With practically no briefs during this period, he devoted himself with single-mindedness to the study of Indian and Continental laws. In 1900, he took his honours in law and just a year later earned his doctorate in laws. These were the years

of quiet study for him ; but a man of his gifts, even with occasional appearance in the Courts, was unlikely to remain in obscurity. His erudition and vision in law had captured the attention of every one and even the most sceptical of his colleagues were not reluctant to acknowledge his learning. Day by day he was gaining recognition and every one looked ahead of him a brilliant future. The chance came to him in 1901 in the Landhaura Raj case, which was proceeding in the trial court at Saharanpur. His performance in the case struck every eye and he began to be frequently offered engagements in the outstation briefs, particularly in the western districts of the province. Dr. Satish was now walking with vigorous strides in the profession, and by 1905 he was able to build up a large practice on the second appellate side. Even in First Appeals the litigants began to engage him. In 1905 he was enrolled as an advocate and in another two years he was to be found in the front rank. He was inundated not only with the High Court briefs but also with the outstation ones. So unquestionable had become his position at the Bar that even in the Judicial Commissioner's Court at Lucknow his appearance became quite frequent. Those who possess some recollection of Dr. Satish say that in his deportment he was meek and humble, in his conversation always savoury. He could maintain his *bon homie* and equanimity even under the gravest provocation. He never over-elaborated his arguments, being averse to display of learning beyond the imperative requirement of the occasion, nor did he make himself abstract to appear profound. He was always easy to follow. In him one could see the combination of exact statement, logical precision and lucid exposition. Rarely was to be found so much of substance so admirably dressed and flavoured, in so small a receptacle. The rapidity with which his point could reach the mind of the Judge conveys how in a few words

he could offer the quintessence of the whole theme of his contentions. In his arguments the reason of law always prevailed over the rule of law—*Ratio legis est anima legis*—reason of law is the soul of law, and this maxim seemed to guide his approach to law. Some of the cases in which he appeared have attained the rank of *causes celebres*.

But the charm of how he stood to argue and his success in what he argued should not obscure the more worthy and lasting product of his genius. The truth is, *Scripta manent verba volent*—written words remain, spoken words fly. What he leaves behind for posterity is his treatise on the law of Specific Relief. In 1906, he was offered the chair of Tagore Law Professor. Needless to say that his Tagore Law lectures on the law of Specific Relief remain a legal classic and an authority on the subject in India up to this day and have not been superseded in rank even by the foreign commentaries. Every principle of equity has been unearthed by him in his work in an endeavour to elucidate with certainty the main principles and the precise extent of the law of Specific Relief. Sir Ashutosh Mukerji, in his foreword to the “Law of Specific Relief in British India” a homogeneous treatise of the Tagore Law Lectures by Dr. Satish, writes—“The monumental work, which has now reached its second edition, was on its first publication, acclaimed in legal circles as a triumph of erudition and research, while the accuracy and lucidity of the exposition of legal principles which throughout characterised the work marked it out as a contribution of enduring value”. It would be only too true to say that, as a legal writer, Dr. Satish had few equals and perhaps no superior.

Though a busy lawyer, his part in the public life was quite active. Just a month before his death he was elected to the Legislative Council as a representative of the Allahabad University of

which he was a fellow. He was the Secretary of the 25th Indian National Congress, and was elected as President of the U. P. Congress Committee in 1914. In the same year he was made the Chairman of the Committee of the non-official famine relief organisation started by the Servants of India Society. He was one of the Secretaries of the first United Provinces (Political) Conference ; and over its seventh session he presided. A man of pen that he was, his interest in the sphere of journalism was very natural. The proposal to start a nationalist newspaper in Allahabad had long been felt and in starting the 'Indian People' his contribution went a long way. Later on when 'Indian People' was transformed into 'The Leader' he was one of the first chairmen of its board of directors. Such was the life of Dr. Satish, a life lived in deeds not in years. It was a life of purest devotion, intense action, and thought and quite naturally it consumed him prematurely. With a feeble constitution he broke under the pressure of work, and, on the 8th of June, 1915, he quitted the land of the living at the early age of 44. So quietly he accepted his illness that none could know of his grave condition until the happening of the inevitable.

The career of Dr. Satish is meteoric, not merely an event, but a portent. From his joining the High Court in 1896 to his death in 1915 not even two decades had intervened and in such a brief span he attained what most of us would not in our whole lifetime. To die is as natural as to be born, but deep is our grief when death leaps upon us without our toils being over. Death has no regard to the convenience of mortals nor does it hear our supplications. May be, those dear to us are dearer to the Lord. "Those whom gods love die young", and perhaps this seems to be a truer answer why the more virtuous break early their connections with the inhabitants of the earth. The history of the Allahabad Bar

has not a more spotless character to commemorate ; incorruptible in integrity, modest without diffidence, learned without vanity, independent and dignified without asperity or pride. Distinction is the consequence, not the object of great minds; the truly great strive more for the approbation of God, and such was Dr. Satish. The light that shone through the frame of clay is not extinct, it still radiates through the pages of his Tagore Law lectures.

What inscription should we choose for his portrait? Not the words recalling his marvels but those transmitting the sublime truth, which he had himself chosen for his late father :

*'He is not dead whose noble life
Leads thine on high.
To live in hearts we leave behind
Is not to die'.*



Sir Tej Bahadur Sapru

By

SRI M. N. SHUKLA

Advocate, High Court, Allahabad

*“And though that he were worthy, he was wys,
And of his port as meke as is a mayde
He never yet no vileinye ne sayde
In al his lyf, unto no manner wight.
He was a verray parfit gentil knight.”*

—Chaucer.

THOSE celebrated lines from the author of the ‘Prologue to Canterbury Tales’ have always appeared to me to contain, as it were, the quintessence of the personality and character of Sir Tej Bahadur Sapru—his wisdom, ability, moral greatness, in short, his over-all perfection. Sir Tej stands unique and almost unparalleled in the legal history of India. As his great contem-

porary Doctor Kailas Nath Katju, himself a stalwart, who has achieved fame in the triple spheres of law, politics and administration, aptly remarked, "The Allahabad Bar does not still realise the immensity of its obligations to the personality of Dr. Sapru. Not only numerous beginners have sat at his feet, but his chamber has been the nursery of Judges. He is the soul of honour, and his uprightness of conduct and his professional rectitude have been a beacon light to lawyers throughout the United Provinces all these years." Paying tribute to his extraordinary natural gifts Rt. Hon'ble Srinivas Sastri in his inimitable style observed, "Nature fashioned Sapru in one of her lavish moods. She put into his blood several elements of greatness—generous susceptibilities, scorn of meanness, large ideas, command of men." But for all his great and exceptional qualities he was not wholly without his share of foibles, 'some glaring weaknesses such as changeableness, love of flattery, pronounced moodiness'. Perhaps that is what made him more interesting, lively and intensely human. His intellect too had marked merits and demerits. It dwelt easily among large ideas and fundamentals, and could acquire and impart with zest. But minutiae could escape his mind, and he was capable of great inaccuracies and inconsistencies. This only served to reveal to the truly discerning admirer the more amiable and human traits of a titanic figure, which was essentially cast in the heroic mould, and which came like a mighty Colossus, bestriding over narrow world.

The finest flower of the Victorian era—unjustly criticised by carping critics for its "cold priggishness and smug self-complacency"—Sir Tej Bahadur Sapru retained throughout his life the typical characteristics of its culture and outlook on life. He was born at Aligarh in 1875, when Queen Victoria had been for thirty-eight years on the throne of England, and only two years since in 1877 she assumed the title of the Empress of India—which marked the beginning of the train of events which was to culminate in the hey-day of British imperialism in this country. Descended

from an aristocratic family of Dewans, Sapru naturally grew up in a background of Muslim culture and language—which had been pampered by foreign rulers—and an appreciation of the British political and legal system, and its institutions in general. From his infancy he showed signs of uncommon intellectual ability and had to his credit an extremely brilliant academic career. He took his M. A. degree from the Agra College, Agra in English in the first division, securing the first position in order of merit. In 1898 he joined the Allahabad High Court Bar. In 1902 he earned the degree of Doctor of Laws and in 1906 was enrolled as an Advocate of the High Court.

He passed through a comparatively short period of waiting and brieflessness. Within about five years of his joining the Bar he got the opportunity of opposing India's top-most lawyer of the time, viz. Sir Rash Behari Ghosh. The case involved principles of Hindu Law and he argued it so brilliantly that in a day he found his feet in the profession. He had crossed the Rubicon, and then he began to climb the heights which his genius entitled him to. His fame spread all over India when he fought successfully a Taluka case in Oudh Chief Court and a Waqf case in the Allahabad High Court. From all parts of the country statesmen, business magnates, members of the landed aristocracy and rulers of native States came to seek his legal advice. He conducted with remarkable skill a large number of big Taluka cases. He also appeared as the defence counsel in the enquiries against the Maharaja of Patiala, the Maharaja of Nabha and the Maharaja of Rewa. His deep knowledge of constitutional law was reflected in his vigorous advocacy in the case involving the boundary dispute between the State of Cochin and the Government of India. In 1920 he was appointed the Law Member of the Government of India in recognition of his scholarship in the domain of constitutional law. During his meteoric career in the profession for about half a century he was thrice offered Judgeship of the High Court, but he respectfully declined to accept the same.

Although he was pre-eminently a civil lawyer, his talents were versatile and he appeared in numerous outstanding criminal cases of the day. His argument on the question of *corpus delicti* and the evidence as to the disposal of the dead body in the B. B. Singh case, in which an I. C. S. Officer was charged with having committed the murder of a maid servant, though repelled by the Courts in India, was ultimately accepted by the Privy Council (1946 P. C. 38). His vast learning had enabled him to rely upon the ratio of two ancient and virtually obscure Irish decisions, which was endorsed by the Privy Council and a finding of acquittal was recorded.

By his fearless and powerful advocacy Sir Tej Bahadur became the doughty champion of all the forces of independence and defiance of arbitrary authority. He valiantly defended a veteran criminal lawyer of the Allahabad High Court, viz. Shri Kapil Deo Malaviya when notice for the offence of contempt of court was issued to him (*see* 1935 Allahabad Law Journal Reports, p. 125), because he was the author of an article published in the 'Leader' newspaper, edited by C. Y. Chintamani, in which he had made the general aspersion "In this connection it is amusing to note that when a comparatively undeserving lawyer is raised to the Bench, which is a fairly frequent occurrence in our judicial history, it is generally claimed etc."

Another sensational case which he argued at the request of the leaders of the Calcutta High Court Bar was the one in which Sri Tushar Kanti Ghosh, the editor of the 'Amrit Bazar Patrika' had been hauled up for contempt of court. [*See* 1935 Calcutta, 419 (D. B.)]. Yet another matter which echoed throughout India was the 'Search Light' Contempt Case in which in a fit of righteous indignation Sir Tej hurled at the Bench a remark which has become classical, "My Lords, there is no such presumption in law that a Judge knows law".

His forensic style was sober, terse and matter-of-fact. He was not eloquent in the popular sense. He lacked fire, but he was lucid and to the

point. He never would indulge in the advocate's tricks. His advocacy was sincere, upright and able. He never regarded '*suppressio veri*' and '*suggestio falsi*' as legitimate methods of advocacy. He was a great believer in the lofty traditions of the Bar, and no one has maintained a higher standard of professional ethics.

The same rational attitude, free from rhetoric, characterised the style of his speeches on the platform, outside the law courts. In this he differed sharply from other public speakers of the day. He was a debater rather than an orator, and was loath to sway the multitudes by emotional appeals. There was the greatest contrast between the flamboyant oratory of such leaders of Bengal as Bipin Chandra Pal and the clear cut, incisive, English speech fastidiously accurate, of Tej Bahadur Sapru in a select gathering of intellectuals at Allahabad.

Dr. Sapru made remarkable contribution by his work on the Imperial Legislative Council during the latter part of the first Great War. After returning from the Viceroy's Council he did very valuable work on the Reforms Committee. From 1929 to 1934 he undertook several journeys to England to take part in the deliberations of the Round Table Conferences and the Joint Parliamentary Committee. The Government of India Act of 1935 was, as it were, his god-child, and it formed the nucleus of our present Constitution. The climax of his legal career came in 1934 when he was made Privy Councillor. In deference to his international reputation as a jurist and lawyer the Oxford University conferred on him the degree of Doctor of Civil Laws.

In political predilections he was a rigid constitutionalist, nurtured on the writings of John Stuart Mill, Edmund Burke, Gladstone and Morley. He belonged to the old school of Indian Liberals, who believed in the efficacy of constitutional methods for making political progress. For several decades he symbolised the golden mean in Indian politics. He was often a successful mediator between warring groups and brought about the Gandhi-Irwin

pact. It is not often realised that he was a nationalist to the core, though not of the type of the violent and blustering extremist nationalists of a later generation. Posterity can never forget his indignant challenge to General Smuts, who had refused to allow any citizenship to Indians domiciled in South Africa. "We claim along with you", declared Sapru, "equal citizenship in the same Empire. We are not willing to be relegated from King George's dining hall to King George's stables". Seldom has the case for equal citizenship been put with greater force than that.

Besides being an erudite lawyer and an astute statesman, Dr. Sapru was a great gentleman. His conversation was full of anecdotes, which had a touch of humorous exaggeration, but were utterly devoid of malice. He loved to speak of the great ones of the land, of the lions of the law, of striking things said and done in his time, but when he narrated them with evident gusto, one half suspected that they were not nearly so Homeric as he made them out. He had the income of a prince but he also gave and spent like a prince, saving almost nothing.

He possessed a robust constitution and a phenomenal digestion. Doctors had a puzzle in him, for he took absolutely no exercise, slept soundly, smoked incessantly, and ate three square meals a day, could not do without meat even once, and 'loved chillies as few Andhras do'. Although of an ascetic temperament in his attitude towards women, he was an Epicurean in diet and loved rich and delicious food. After relinquishing his office as a Law Member he brought with him a Goanese cook and chef, and he also employed Muslim cooks. Thus, there used to be three different varieties of food in his kitchen—the Kashmiri, the Muslim and the European. He was a splendid host and entertained sumptuously. He also dressed immaculately and went in for the most expensive garments.

It is difficult to find a person of such wide culture, catholic taste and urbanity. Apart from legal studies, he was vastly read in history, philosophy, political science and literature. He was a great scholar of Urdu and

Persian, and Urdu poetry was one of his 'pet affections', to use that phrase of Frederick Harrison. Under his patronage were held in Allahabad—and alas! they have since ceased—the most magnificent 'Mushairas' in which the leading poets of the land participated and which have become landmarks in the cultural history of the town. He wrote a most illuminating preface to the poetry of Pt. Brij Narain 'Chakbast', which also revealed his great insight into Urdu literature. It is perhaps not known to many that he was chosen by the late Maulana Abul Kalam Azad as the only person competent to contribute in chaste, felicitous and faultless Urdu a foreword to the collection of Essays written by the Maulana. There is a story told of an amusing incident which happened in Hyderabad when Dr. Tej Bahadur Sapru went to argue a case in which he was pitted against Mohd. Ali Jinnah. There was an original document in Persian which had to be deciphered and the counsel of the parties were requested to read it out for the benefit of the court. Mr. Jinnah miserably failed and betrayed his profound ignorance of Persian, whereas Mr. Sapru fluently read out the entire document. This created a sensation and the next morning's newspapers commented in flaming headlines on '*Pandit Jinnah and Moulvi Sapru*'.

Sir Tej Bahadur Sapru breathed an atmosphere of opulence and magnanimity. There was a grandeur about him, which seemed to scoff at anything which savoured of pettiness or triviality. Such was the effect of his dominating personality that when he entered the scene no one else seemed to exist. His evening 'darbars' have become legendary, where the 'elite' of the town used to be present, exchanging repartees, delightful anecdotes, choicest Urdu and Persian poetry and comments on current, political and social topics. One finds in an immortal letter of the Rt. Hon'ble V. S. Srinivasa Sastri a picturesque description of such 'darbars'. Adverting to Sir Tej Bahadur Sapru he wrote, "His evenings he enjoys most, lounging in loose night apparel, imbibing tobacco in every form except as snuff, and

surrounded by cronies who lay it on, as Disraeli did to Victoria, with a trowel”.

Sapru’s famous house, 19 Albert Road, Allahabad—in whose glorious contiguity the author of this article has the privilege to reside—became a place of pilgrimage for all foreign visitors as well as celebrities of this country. Round him gathered princes and plebeians, lawyers and judges, professors and politicians, scientists and men of letters and a myriad satellites that circled round and took warmth from that radiant luminary, until envious death quenched his fire on the 20th January, 1949. He passed away after a full, active and singularly versatile life. Where shall we see the like of him again—such a virile and magnetic personality, of such moral grandeur and integrity, so anxious to preserve the purity and prestige of the profession, so “learned and lovable, the acme of honour and the pink of courtesy”.



Sir Charles Ross Alston

By

SRI BRIJ LAL GUPTA

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MY earliest recollection of Sir Charles is of a figure of pigmy stature, thinly built, striding across the Marble Hall of the High Court, smoking a cigar, with its thick end in the mouth. (He thought that by lighting it at the thin end, and by throwing away the thick end after he had finished smoking, he would imbibe less nicotine). He spotted a group of gowns, and hurried to join it. Pulling one on either side of him by the shoulder to bring them on a level with his own, he started telling them quickly and confidentially, some humorous anecdote or naughty story of which he had an inexhaustible fund. The while, his eyes twinkled merrily and his face wore a mask of mock solemnity. Inevitably, his audience burst into peals of laughter, and admired his informality and friendliness. Then he strode away, as quickly as he had come, to some court-room or the Bar Library. Subsequently, on numerous occasions,

I saw him do the same thing, both in the High Court as well as outside. Naturally, he was very popular with everyone : junior or senior, European or Indian, high or low.

His diminutive stature gave currency to several stories, sometimes made by himself at his own expense. The most well-known is when some advocate told him humorously, " you are so small, I could put you in my pocket !" to which Sir Charles immediately retorted : " Then, you will have more brains in your pocket than in your head ".

Another story, which emphasized his dimunitiveness was made by him when the late Mr. Justice V. D. Bhargava joined the High Court Bar. He was shorter in stature than even Sir Charles. On spotting the new-comer, Sir Charles strode up to him, and grasping him by the arm, said in mock serious tones :

" My dear fellow, you have broken my long record. Thank God for sending you here, now I can also call myself tall."

Yet another incident occurred when Sir Charles and his wife took their child for admission to a school at Naini Tal. It may be stated that Lady Alston was the daughter of Mr. E. Howard, another distinguished Barrister of this Court. While the Mother Superior and Lady Alston stood talking on the balcony of the school, the Mother Superior noticed the boyish figure of Sir Charles, pacing the pavement below. Pointing to him, she said :

" Madam ; if you are thinking of getting that one also admitted to school, let me tell you it cannot be done. He is much too big for this school."

Lady Alston quietly told her :

" Mother, he is Sir Charles, my husband, not my son."

Sir Charles' wit and humour, his stories and anecdotes, his felicity of expression, his great gift of repartee made him very popular, and gave him an easy access to men's hearts. Like Falstaff, he was not only humorous

in himself, but was also the cause of laughter in others, though not for the same reason.

In a letter to his daughter Rukmini, the Rt. Hon'ble Sir Srinivasa Sastri, who once travelled with Sir Charles on *S. S. Kaisar-i-Hind* bound for England wrote of a day with Sir Charles thus:

This one day with a Barrister of Allahabad, Ross Alston. He is a wag. He enquired and I replied :

"You do not eat meat ?" "No."

"You do not drink wine ?" "No."

"You do not smoke ?" "No."

"You do not bet ?" "No."

"You do not play bridge ?" "No."

"You do not dance ?" "No."

"You do not join the sports ?" "No."

"You do not flirt with pretty women ?" "No."

"Then why the devil do you not throw yourself overboard ?"

With mock seriousness, Sir Srinivasa Sastri ended the letter to his daughter saying :

"If I were young, I should have profited by this robust philosophy".

As to his being characterized as a "wag", Sir Charles might have quoted to Sir Srinivasa Sastri the withering remark of Sir Toby Belch to Malvolio in "*Twelfth Night*" :

" 'Cos thou art virtuous, shall there be no cakes and ale!"

Sir Charles' informality and complete freedom from inhibitions, his simplicity and friendliness and joy of living were due, perhaps, to his having imbibed the laughter and sunshine and colour of the tropical Trinidad, where he had spent his boyhood and adolescence. Though born in Scotland, he went to Trinidad very early in life and remained there upto the age of twelve years. Then he went to England for schooling and remained there for seven years. He again returned to Trinidad and stayed

there until time came for him to go back to England for his legal studies. After his call to the Bar from Gray's Inn, when he was looking around for a place to establish his legal practice, he came across Mr. George Jackson, an eminent Barrister of Lucknow, who suggested to him that he should go to India. After some time spent in Lucknow and gauging prospects there, he was advised by Mr. Jackson to shift to Allahabad, where he was enrolled as an Advocate in April, 1885, at the age of twenty-three, and practised here up to the date of his death in January, 1937. It is a question whether the decision to spend his life in India was due only to the advice of Mr. George Jackson. It may very well be that the colour and sunshine of the tropical Orient found an answering echo to the colour and the sunshine and laughter of the tropical West Indies mixed in the Alchemy of his own mind and body.

Once having settled down at Allahabad he bent all his energies and employed all his great gifts in the practice of the profession on the criminal side. In less than a decade, he came to the forefront. It may be recalled that in the history of the Allahabad Bar, the eighties of the last century were an age of giants, Europeans and Indians, both on the criminal and the civil sides. It was therefore no easy task for a new-comer to reach the top rung of the professional ladder in such a short time. Having arrived there, he maintained a prominent position in the forefront of the rank of practitioners for more than forty years thereafter, until his death. During these years he appeared for the Crown or for the defence in some of the most celebrated trials throughout Northern India, and not merely in this State. Even in his early days, he appeared in the State of Alwar in the trial of Major Ram Chandra, which attracted considerable notice all over India, and firmly established his reputation as a great criminal lawyer. On behalf of the Crown he conducted the trial of the Ali Brothers: Maulanas Muhammad Ali and Shaukat Ali at Karachi. He appeared in the Kakori dacoity case, and in the Katarpur riot case and in many others, too numerous to be mentioned.

The outstanding characteristic of his advocacy was an absolute fearlessness combined with a power of expression, which rendered clear the most intricate matters. His special genius was to find out important and crucial points in the case, and not to waste time over minor matters or in long and tedious arguments. His cross-examination of witnesses was brilliant. His rapier thrust, his logical faculty, the power and eloquence of his advocacy combined with an absolute fairness in the presentation of his cases, were an inspiration to juniors, and an intellectual treat to anyone who watched his performance in court. His quickness, and the directness of his approach very often proved the complete undoing of the Crown Pleader, who in the fond belief of a long innings by Sir Charles, was, on the swift conclusion of his short address, suddenly called upon to take the crease, and did not know what to do.

Some stories of his anxiety not to waste time either his own or of the court may be told. When at the end of a day, after Sir Charles' arguments in a case, his junior expressed the hope that the appeal would be allowed, Sir Charles told him never to prejudge the issue, but to wait until judgment was delivered. Next day when the court assembled, Sir Lal Gopal Mukerji, one of the members of the Bench, who had read the record overnight, enquired of him, why notice of enhancement should not be issued to his clients, and expected that Sir Charles would naturally ask for the usual fortnight's time to answer the notice. But Sir Charles replied that if his arguments of the previous day did not convince the Bench, they were not likely to have that effect a fortnight later, and it was no use prolonging the agony.

On another occasion, when an admission Judge, after perusal of judgment, enquired of him, what was there in his revision, he answered shortly : "Nothing". Whereupon the Judge enquired why he had filed it, and Sir Charles replied : "Because the client wanted your Lordship's opinion and not mine." On yet another occasion after Sir Edward Bennet had perused

the judgment of the Sessions Judge and the Magistrate, he enquired of Sir Charles what was the question of law involved in the revision : Sir Charles replied : "It is writ large on the face of the two judgments. If you cannot see it, I cannot make you."

Munshi Ram Lal was his clerk. He was a very competent man and Sir Charles had great respect for him. He used to prepare his notes of arguments, and used to stand behind him in court. Once the Judge enquired why he said that there were only six prosecution witnesses, while the record showed that there were seven. Sir Charles turned to his clerk, who replied loudly enough for the Judge to hear : "There were seven, but one was disbelieved by the Sessions Judge." Sir Charles told the judge : "You see, my Lord, my Munshi can never be wrong."

With his great gifts as an advocate and his outstanding position at the Bar, he combined a singularly high standard of professional honour and integrity, and no one through all the years of his long career at the Bar could say that he deviated by a hair's breadth from the rules of the strictest professional propriety.

To the junior members of the Bar, European or Indian, Barrister or Advocate, he was not merely kind but generous. He had a big heart and he helped his juniors earn handsome fees, and was unstinting in their praise. On the occasion of Sir Shah Mohammad Sulaiman's elevation to the Bench, he paid a most handsome tribute to him. Sir Shah Sulaiman's great learning and ability was pointedly brought out by him during his speech, when he observed that those qualities were remarkable in one, whose age was less than even the number of years that the speaker had put in at the Bar.

He was always helpful to the members of the Bar. Story is told of Dr. N. P. Asthana, having a rough time in the admission of a Criminal Revision. The holdall of Munshi Asharfi Lal, a legal practitioner of Agra had fallen off a moving train. Munshi Asharfi Lal pulled the chain and recovered his holdall, but was prosecuted and convicted for stopping

the train. Sir Charles happened to come into the court-room at the psychological moment, when the guillotine was just about to fall on Dr. Asthana's case. Sir Charles whispered to Dr. Asthana, but loud enough for the Judge to hear, that when, in similar circumstances, Sir Henry Richard had pulled the chain to recover his hat, there was not even a 'hiss'. This did the trick, and the revision was admitted.

In the days of colonialism and colour prejudice, Sir Charles was colour blind. May be, this was due to his nurture in the Caribbean, the land of Worrel and Weekes, Sobers and Kanhai, Walcott and Constantine, or may be, it was due to the free masonry of the legal profession, which he had truly imbibed.

This country has reason to be grateful to him for the removal of a most humiliating blot on its Criminal Procedure. It provided for the trial of European British Subjects by European Juries in the High Court, while 'natives' were triable by magistrates and subordinate judges. In 1922, when the Rt. Hon'ble Sir Tej Bahadur Sapru was Law Member of the Viceroy's Executive Council, he sought the advice of Sir Charles Ross Alston as an expert on Criminal Law and Procedure for removing this glaring example of racial discrimination. Sir Charles not only advised his clients, the European community to accept the necessary amendments in the Criminal Procedure Code, but it was his advice and personal influence which made it possible for the Government of India and the Indian Legislature to pass the necessary legislation.

It was a just tribute to his distinguished position at the Bar, that in 1909, he was elevated to the Bench and occupied his seat with distinction. He did not like to continue on the Bench for long, as the lure of the profession was too strong for him. Later on he was Knighted by His Majesty's Government.

He had an extremely genial personality. No other leader of the Bar was more popular with the junior section. He had always something very refreshing to say. Mr. B. E. O'Connor, his contemporary on the Civil

side said of him :

“He overflowed with humanity and was incapable of anything even remotely suggesting pettiness or smallness. His acts of kindness were innumerable, but they never saw the light of day. He preferred to do good by stealth, and the good he did lived after him.”

It can truly be said of him that he was a great gentleman.



•

Dr. Surendra Nath Sen : The Burke of the Allahabad Bar

By
SRI GOPAL BEHARI
Advocate, High Court, Allahabad

IN a corner of the Court-room sat a little man absorbed in his own thoughts waiting for the Court to assemble. I enquired and found that he was Dr. Surendra Nath Sen. Slowly I proceed towards him to pay my homage and the reply comes with a vigorous nod, "Thank you. How do you do?" Although his is almost the first case on the cause list and he has to open arguments, there are no last-minute consultations with the junior counsel, no brushing up of facts, no search for books. Dr. Sen sits calm and sedate. When he starts the arguments, it appears as if a bottle of champagne has opened up in the court-room. In sheer splendour of diction,

high forensic eloquence, torrential flow of words punctuated with quotations from classical English writers and crispness of style, he had scarcely an equal. When Dr. Sen spoke in a resonant voice with a charm of its own, you could see the pomp and pageantry of Elizabethan literature. His familiarity with English poets from Chaucer to Tennyson was phenomenal and so also was his knowledge of human affairs, with all the currents and cross-currents of emotions and psychological reactions.

He belonged to a former rich family of Indigo Planters. His father Babu Laxmi Narain Sen had a large Indigo plantation in Ghazipur in the North-Western Provinces, now part of Uttar Pradesh. He was born at Patna on 28th of August, 1871. At the age of 13 he passed the Matriculation examination from the Ghazipur Mission School in the First Division with distinction in several subjects. He had a distinguished career at Canning College, Lucknow, where he took his B. A. and M. A. degrees. In 1893 he became an associate Professor of Philosophy and English Literature in Victoria College, Gwalior and after serving there for several years he resigned owing to ill-health and joined the Azamgarh Bar. Later on he became the Government Pleader there. He originally started practice at Fatehgarh where his brother, Mr. Upendra Nath Sen was a Subordinate Judge. In 1903 he shifted to Allahabad where he practised with great distinction till 20th of June, 1927, when he was elevated to the Bench as an Additional Judge of the High Court. He was awarded the Doctorate of Law degree of the Allahabad University in 1914, the subject of his thesis being 'Hindu Jurisprudence'. One of his external examiners was John D. Mayne, the celebrated authority on Hindu Law. Just before his elevation he was appointed a member of a Special Committee for the Revision of the Transfer of Property Act, on 25th of April,

1927, with Hon'ble Mr. S. R. Das as Chairman and Sir B. L. Mitter and Sir D. F. Mulla as other members. The Committee finished its work with remarkable speed. It assembled on 27th of April, 1927 and made its recommendations by the 15th of June, 1927, when Dr. Sen left Simla for Allahabad to join the Bench.

After a judicial career of nearly four-and-a-half years, he resumed his practice at the Bar on the 30th of February, 1932. He revised the second edition of Dr. Satish Chandra Banerji's Law of Specific Relief. He was appointed a member of the Judicial Committee of Kashmir State and also of the State of Rewa. His two elder brothers were also lawyers but they were more interested in Bengali poetry than in law. His eldest brother Devendra Nath Sen practised law at Jaunpur for some time and then shifted to Bengal. He is considered to be one of the great poets of Bengali literature. The other brother Babu Rajendra Nath was a lawyer at Azamgarh. He was also a poet. He translated in English blank verse '*Megh Nath Badh Kavya*'. Dr. Surendra Nath Sen himself was a poet and he has to his credit some excellent collections of Bengali sonnets, such as, 'Hindola,' 'Tushar,' 'Chinnar,' 'Baikali' and 'Nidagh'. He was married at Hazaribagh to Sarojani Devi, daughter of an Engineer, Mr. G. N. Sen. She died in 1938. After her death Dr. Sen's health began to fail and he left his mortal frame on 8th of January, 1950.

The Advocates' Association in its condolence resolution expressed its grief in these words :

"In the death of Dr. Sen the Bar has lost one of its highlights who maintained its best traditions and enhanced its reputation. He was well-known for his eloquence, literary gifts and mastery of facts and law."

Dr. Narain Prasad Asthana speaking on behalf of the Advocates' Association before the assembly of all the judges and members of

the Bar remarked that "Dr. Sen was a member of the Bar for the last 45 years and his literary attainments and mastery of facts were appreciated and deservedly recognised not only in this Court but throughout the province. . . . His courtesy and politeness, his general assistance to juniors, his sympathetic and helpful attitude towards all had greatly endeared him to the members of the Advocates' Association." Mr. R. N. Gurtu (later Mr. Justice Gurtu) speaking on that occasion on behalf of the Bar Library remarked that for well over 30 years the Courts had resounded with his eloquence and that when he addressed the court it was apparent that he had mastered every detail of his case that he had penetrated into the bottom of the problem and the judges knew that nothing remained to be said. Pt. Kanhaiya Lal Misra, Advocate-General of U. P., then Additional Government Advocate, referring to the first occasion when he saw Dr. Sen speaking at the close of Pt. Misra's University career, said that he was completely overwhelmed by the avalanche of words that fell from his lips. Mr. B. Malik who presided over the obituary reference as the Chief Justice of the Court and who was his junior for over four years observed as follows :

"When I joined the Bar of this Court he was at the height of practice. Once out of curiosity I checked up the number of First Appeals in which he appeared and I found that he had been briefed in as many as 75 per cent of the cases. Soon after I joined the High Court Bar he took me under his wing, and I cannot sufficiently describe the help and assistance that I got from him during four years that I worked as his junior. When at the height of his practice he gave it up, and accepted the judgeship. His judgments specially on questions of Hindu Law would bear testimony to his vast learning and his knowledge of case-law. He knew and could quote from

memory every important case, and one thing that impressed me most, was his quickness of grasp and his capacity to argue cases from notes prepared by others after a brief consultation. He was kindness personified. His politeness was proverbial, and he was loved and respected by all those who came in contact with him."

Almost every Saturday evening there gathered at his house the intellectuals of the City of Allahabad where the burning topics of the day were informally discussed. The late Pt. Jawahar Lal Nehru was a frequent visitor to the Saturday Club and its President Dr. Sen lavishly entertained the visitors. Apart from Mr. B. Malik, his juniors were the late Mr. Uma Shanker Bajpai, who later rose to be a Judge of this Court, a born master of English prose, the great Mr. Pyare Lal Banerji, the accomplished Advocate of all-India stature, Mr. Narbadeshwar Upadhyaya, a Sanskrit scholar, Mr. R. C. Ghatak who is happily still in active practice and Mr. Ajodhya Nath, who could silently bear any amount of professional load and who later worked as junior to Sir Tej Bahadur Sapru.

Dr. Sen left surviving him three sons: Sudhir Nath Sen of General Motors, who unfortunately died in 1965, Robin Sen, an Advocate of this Court who years back won a trophy in All-India Wrestling Match and his third son Munindra Nath Sen who is an Assistant Librarian in the Public Library, Allahabad.

His familiar expressions were, 'as clear as the pike staff; the adder hisses where the sweet birds sing; roses have thorns while silver fountains mud; as innocent as the dove; carried his heart upon his sleeve for any dog to play cat with.' It is difficult to recall all the twists and turns of his expressions but one thing is undeniable, viz. the literary flourishes did not affect his absolute fidelity to the facts on record or his unrivalled mastery of the

law. However, dull the case, however, intricate the facts, the presence of Dr. Sen electrified and enlightened the whole atmosphere, and when he addressed the Court, judicial interest could never flag. Such then was the career of one of the stalwarts of the profession who was almost invariably pitted against Pt. Moti Lal Nehru, Sir Tej Bahadur Sapru and Mr. O'Connor, legendary figures of the Bar of this Court.



Mr. Pearey Lal Banerji

By

SRI KEDAR NATH SINHA,

Senior Advocate, Supreme Court and High Court, Allahabad

THE Allahabad High Court is noted in the country for having produced great Judges and lawyers. John Edge, Mahmud, Theodore Piggot, A. T. Harries, P. C. Banerji, Sulaiman and Niamatullah among the Judges and Moti Lal, Sunder Lal, Ram Prasad, Jogendra Nath Chaudhury, Satish Chandra Banerji, Tej Bahadur Sapru, O'Connor, Charles Ross Alston, Surendra Nath Sen and Pearey Lal Banerji among the lawyers (I have scrupulously left out living giants), to name only some of them, are names in the legal world of which any country could be proud. We here cherish their memory with respect, admiration and even awe.

I propose writing about Mr. Pearey Lal Banerji with whom I came into contact which was close and which subsisted for about 22 years till the last breath of Mr. Banerji's life. I had the privilege of appearing with and against him in a number of cases and in my younger days for me it was a passion to follow him from court to court, when I was free, and hear the master arguing his cases with consummate ability and skill.

Mr. Banerji was born on 24th July, 1883 at Allahabad and died here on 22nd March, 1952. His father Mr. Dwarka Nath Banerji too was a distinguished lawyer and professor of law in the University of Allahabad.

Mr. Banerji started practice in the High Court in 1907 and was appointed Advocate General of U. P. in 1947. His rise in the profession was steady and gradual and not phenomenal and therefore certain and stable. He rose to the top of the profession and to dizzy heights of forensic lore not by miracles nor through anybody's favour but by hard and studious work. Law, as is well-known, is a jealous mistress requiring constant wooing and law was Banerji's passion. His devotion to the goddess of law was single-minded and unique. In fact he had no other temple where he could burn the incense.

He was an unrivalled exponent of law and it was an intellectual treat to hear him marshalling his facts and unravelling the intricacies of the law involved in his cases. He held facts sacred and allowed no deviation. He had the unique advantage of possessing an unruffled temper and even the interruptions and fascinating repartees of his dear friend and formidable rival Dr. Kailas Nath Katju, who is happily still with us, did not disturb him and he went on with his argument until he had his full say in persuading the Judges to appreciate his point of view. Needless to say, the Judges listened to him with great attention and consideration. His advocacy was persuasive, sweet and forceful. His command over the English language was superb and it was an equally fascinating intellectual treat to hear his dialogue. Where more than ordinary emphasis was needed or where the Judge wrongly persisted, like the waves in the ocean, his sentences, couched in the most elegant language, came forth with a dash and thunder in quick succession and produced the desired effect.

His contribution to the enunciation of law at the bar is enshrined in the law reports of about 30 years during which period he appeared in almost every case of importance and he was equally at home in Criminal, Civil and Revenue law and latterly he had mastered the complicated Avadh Taluqdari Law, so much so that his services were constantly in requisition at Lucknow. In his later years his reputation had travelled beyond his own State and he had come to be recognised as an All-India leader of the profession, an Advocate of great skill whose enunciation of the legal principles was exquisite, illuminating and forceful. His style was at once elegant, chaste and captivating.

To glean a few of the cases in which his extraordinary ability as a lawyer contributed to the laying down of the law on the point by this High Court, the following may be found interesting and useful :

1. In Rameshwar Prasad's case reported in 1950 A. L. J. 719, Rameshwar Prasad *vs.* Ram Chandra over-ruling Dwarka Halwai's case reported in 1940 A. L. J., p. 166, the High Court held that the decree obtained against a minor where his guardian, properly appointed, acted with gross negligence is voidable and not void.

2. In Nand Ram's case reported in 1947 A. L. J. 34 the High Court made an important pronouncement while discussing the scope of an application under section 561-A, Criminal Procedure Code and held "..... the High Court is reluctant to interfere with the ordinary course of law and substitute its own judgment for the judgment of the Magistrate who is trying the case before the completion of the trial. But where the facts are so preposterous that the High Court feels satisfied on the admitted facts that there is no case against the accused and a further prolongation of the prosecution would amount to harassment and abuse of the process of the

Court ; it is the duty of the High Court to interfere under section 561-A of the Criminal Procedure Code and put an end to this abuse.”

3. In *Debi Prasad vs. Emperor* (1947 A. L. J. 52) a full bench of 5 Judges considered Rule 119 of the Defence of India Rules and the applicability to it of section 114 of the Evidence Act.

4. In *Mohammad Azam Khan's* case reported in A. I. R., 1947 Allahabad 137 it was held that where the *waqf* was made in the name of God and was created in perpetuity and a portion of the usufruct of the *waqf* property had been reserved for pious and charitable purposes it would follow that the *waqf* intended by implication to reserve the ultimate benefit for charity.

Reference, however, to such cases will not be complete without mentioning two very important cases argued by Mr. Banerji, namely—

(1) the famous contempt of court case against Mr. P. R. Das in which Mr. Banerji was at the height of his extraordinary forensic abilities, and (2) the U. P. Zamindari Abolition Act case which is a landmark in the history of land legislation.

We do not admire Pearey Lal Banerji only for his erudition and learning, his skill and advocacy but for his broad human sympathies. He was a good friend and helped the juniors and the needy. He was a man of few words but firm in his conviction. In his otherwise reserved and seemingly stern frame was encased a warm and soft heart. His personality was great and massive. He had a fine sense of humour and many do not know that in his free moments of which, however, he had very few, he enjoyed jokes. One trait of his character was that he would start a joke and make people around him laugh yet even a smile would not escape his own lips.

His sense of punctuality was remarkable. The most lucrative case could not detain him in the office beyond his usual hour of 8

or 8'30 in the night. When after the day's toil of almost unattainable intellectual occupation of the highest degree, he left his office and after an hour's rest and recreation, during which he even used to fondle small children and play with them, he sat down to dinner and used to go to bed only after reading some English literature which was his relaxation. I remember an incident which marks out his sense of punctuality. I was instructing him in a complicated case when the time for his leaving the office arrived. I was in the midst of explaining the point of law involved in the matter. He pleasantly but firmly interrupted me saying "All that you say is quite true, but look at the clock." I instantly obeyed and found that it was 8 p. m. We rose for the day and continued discussion the following evening.

I close this tribute by quoting a few sentences of his life-long friend Dr. Kailas Nath Katju, another doyen of the Allahabad Bar. No tribute could be greater and no language more forceful :

"To him (Mr. Banerji) a new legal proposition is a thing of joy and beauty for ever and the way he examines it is like that of a jeweller looking at the flashing rays of a many coloured diamond. He explores every aspect of it just as an explorer explores every nook and corner of a newly discovered island. He traces the growth and development of a legal theory and principle like a scientist expounding the development of a far-reaching and world shaking scientific discovery. His law books, particularly his English law reports, those myriads of precedents, are the holy of holies not to be profaned by the touch of idle curiosity but to be opened and read and inwardly digested in the spirit of a devotee reading the sacred scriptures. . . ."

Such, I think, is the correct attitude of all devotees of law. An epoch making career like Mr. Banerji's should inspire and elevate us.

Other Juristic and Legal Subjects

‘A Case of Constitutional Conflict
Between
The State Legislative Assembly and the High Court’
Supremacy of the Constitution Vindicated
By
MR. JUSTICE MIRZA HAMEEDULLAH BEG

1. How the Problem arose

THE fundamental principles on which orderly and civilized Government rests, broadly covered by the term “Rule of Law”, are laid down for us in our Constitution. The Constitution assigns to the Judiciary the function of authoritatively and finally interpreting the Constitution and of expounding its meaning. In 1964, however, the U. P. Legislative Assembly put forward a claim to determine for itself the ambit of its constitutional

power to punish citizens for its contempts. This claim seems to have been advanced upon the footing that such power to interpret the Constitution on such a matter was itself a privilege conferred upon the Assembly by the Constitution. It sought to enforce this claim by ordering the production, by way of punishment, of two Judges of the Allahabad High Court in custody because they had entertained the Habeas Corpus petition of a citizen, Keshav Singh, and had passed an interim order of release of the petitioner on bail after the petitioner had been arrested on a warrant issued by the Speaker of the Assembly and sent to gaol for its contempt. The petitioner's complaint to the High Court was that the Legislative Assembly had stepped beyond the limits of its constitutional power to punish its contempts. He alleged that he had done nothing which could be construed as its contempt. No doubt, the petitioner had concealed a number of very material facts initially, and, after the whole set of facts had been revealed, the High Court itself held that Keshav Singh had been quite properly punished, his petition was dismissed, and he was sent back to prison to serve the remaining part of his short sentence. But, the unfortunate series of events which resulted from the filing of the Habeas Corpus petition of Keshav Singh necessitated a reference of several questions of grave constitutional importance by the President to the Supreme Court of India. And, these questions had to be answered by the Supreme Court before Keshav Singh's case could be finally decided by the High Court. The basic difficulty in the case was caused by the following words in Article 194(3) of the Constitution :

“ the powers, privileges, and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law,

and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of this Constitution."

2. Certain Inherent Difficulties

The answers given by the Supreme Court of India to the questions sent to it by the President disclosed the difficulties which were the inevitable results of trying to import and fit the flexible, elusive, changing, and so characteristically and peculiarly British contents of Constitutional Law as the "Powers, Privileges, and Immunities" of the House of Commons into the logical scheme of a necessarily rigid Federal structure of our Constitution. The fluidity of the unwritten British Constitution puzzled the trained logical mind of the Frenchman de Tocqueville so much that he declared in desperation : "The English Constitution has no real existence" (see Dicey, "Law of Constitution," 10th Edition, page 22). Perhaps no branch of British Constitutional Law is so thorny and apparently so lacking in logic as the law relating to the "Powers, Privileges, and Immunities" of the House of Commons. The logic behind its development and its contents at any given time cannot be perceived or understood divorced from British Constitutional history. This is a basic truth which the Supreme Court brought out ; and, it then explained the underlying historical reasons.

Just as it is not possible for even the legally omnipotent British Parliament to change certain physical facts, so also it was not legally possible to transplant here without some transmutation certain incidents and appendages of legal power, position, and mutual relations of the House of Commons and the King's Courts which depend upon the peculiarities of British Constitutional history. The

British historical background, possibly resulting in certain attitudes or conventions or understandings which are not, strictly speaking, in the realm of legally enforceable or established rules at all, cannot be engrafted on the body of our written Constitution by mere implication. The qualifying word 'possibly' is used here because the precise result, at any given time, of the historical process which has shaped and determined the character and contents of every part of the largely conventional British Constitution cannot be given with complete certainty. The exact result at any particular time (the relevant time for us is 1950) must remain a matter of controversy as the divergence of views between the majority and minority opinions of their Lordships of the Supreme Court on this matter itself shows. Consequently, the majority of their Lordships of the Supreme Court preferred to base their opinions on the clear meanings of the express words of the Constitutional provisions as a whole, about which there was no uncertainty, rather than to accept the vague alleged implications of Article 194 (3) of the Constitution. But, both the majority and the minority judgments, after extracting the threads which could be extricated from the tangled skein of British Constitutional history, have tried to weave them into the very different texture and pattern of our written Federal Constitution to the extent to which it was possible to do so. This was done because it was the apparent intention of our Constitution, as revealed by its Article 194 (3), that this should be done until more suitable provision could be made by appropriate legislation.

3. Constitutional Duty and Function of the Judicial Organ

In this country, when a House of Legislature exercises a quasi-judicial function in punishing its alleged contempts, the duty of

determining whether a House of Legislature has or has not overstepped the bounds of its legal authority in doing so is certainly vested in the judicial organs of the State; and, the Judiciary has to perform its duty when properly called upon to do so. Even in England, the courts have successfully asserted their power to decide jurisdictional questions of this nature and determine the existence and scope of alleged privileges of the House of Commons. This exercise of such judicial power by the King's Courts has been acquiesced in by the legally sovereign Parliament which could have easily passed a law denying such powers to the courts; but, the British Parliament has not chosen to do so.

As there has been no legislation in this country also so far, defining "the powers, privileges, and immunities" of a House of the Legislature of State, the only method legally left open by our Constitution for obtaining, in cases of dispute, determinations of basically important questions relating to the existence, content, and scope of any privilege, power, or immunity of a House of Legislature is that of adjudication by courts. Of course, every authority or organ of State, whether Executive, Legislative, or Judicial, has the right and duty of determining the ambit of its own powers or jurisdiction for its own satisfaction so that it does not exceed the limits of its legal authority in exercising it, but, when a citizen complains of an actual "excess of power" or "misuse of power" for a collateral purpose (a "*detournement de pouvoir*" as the French lawyers call it) or "abuse of power" on the part of any authority or organ of State, however exalted, as a citizen is permitted to do under a civilized democratic Constitution, who is to decide the questions which may arise? According to elementary principles of justice, the authority alleged to have perpetrated a wrong could not be made the Judge, or, much worse, the sole and exclusive judge of

its own cause in a case in which the citizen's grievance is against that authority itself. If decisions of an authority, however exalted and responsible, could not be questioned at all anywhere, even if grossly beyond the reasonable scope of its powers, it would constitute a standing invitation to that authority to exceed its powers.

4. The Basis of the Claim of the Assembly was "Lex Parliamenti"

Counsel for various State Assemblies who appeared before the Supreme Court seemed to base their claims on a theory that "Lex Parliamenti" constituted a separate system of law and of rules with which the Judiciary had no concern. Even the rule that courts do not look behind the General Warrant issued by the Speaker, laid down in the case of *Sherrif of Middlesex* (1840), appears to have been attributed to "Lex Parliamenti" by the counsel for the Assemblies, although a presumption of propriety and legality of a General Warrant, when such a Warrant was produced before a court, could only be an optional and not absolute rule of evidence for the courts themselves to observe. If that rule was part of some "Lex Parliamenti" with which the courts had nothing to do, the courts could not, strictly speaking, be required to observe or enforce it at all. Moreover, in the case of *Sherrif of Middlesex* (1840) itself, it had been declared by Coleridge, J., that the "presumption" employed by the English Courts was not to be confounded with any "privilege" of the House of Commons. The presumption could not arise if the Speaker's warrant disclosed a palpably unsustainable ground of imprisonment. This distinction made by English Courts clearly meant that they could and did entertain, examine, and investigate a petitioner's grievance upon a Habeas Corpus petition directed against imprison-

ment under the Speaker's warrant as Mr. Justice Sarkar, holding the minority view in our Supreme Court, also indicated.

The theory that *Lex Parliamenti* was a separate system of law altogether, unknown to the King's Courts, was put forward for the last time in England in the case of *Stockdale v. Hansard* (1839) in the first half of the nineteenth century, and shattered beyond repair by the judgment of that case. By that time, the Constitution of England had assumed a very definite democratic pattern. Many of the theories advanced, claims made, and doctrines propounded before the English Constitution was fully formed and stabilized, lost their relevance and validity in a changed context. It was declared that, under the Constitution as it stood in the nineteenth century England, the House of Commons could certainly not make any law by a mere resolution; and, its resolution could not have the force of a judgment of a court of law binding upon the King's courts. After this decision, given in *Stockdale v. Hansard* (1839), it would have been logical for the King's courts to have discarded the assumption on which the presumption attaching to the General Warrant of the Speaker was based. Nevertheless, soon afterwards, in the case of *Sheriff of Middlesex* (1840), an English Court, perhaps inconsistently, fell back upon the apparently obsolete basis of a Constitution which was no longer in existence. But, it did so upon the peculiar facts before it. It is, however, not necessary that an English Court should have adhered to this presumption on the grounds given there if such a question had arisen in 1950 in a different context. Mr. Justice Sarkar, who held the slightly divergent minority opinion of one against six in the Supreme Court, observed: "I do not think that the House of Commons was itself ever a Court." If this was the position, the basis on which the presumption of legality and propriety of the Speaker's General Warrant rested—that it could be equated

with a Warrant of a Superior Court—was shaky even in England.

5. Erskine May's Exposition

The authority cited frequently by both sides to the controversy was that of Sir T. Erskine May who, in his treatise on "Parliamentary Practice", dealing with the "Misconceptions as to the Nature and Authority of Parliamentary Law and Privilege", pointed out, under the heading of "Confusion of Legislative and Judicial Jurisdiction of Parliament", that the Judges' opinion in Thorpe's case, 1452, confirmed by Coke's dictum, according to which the ordinary law courts could not judge of matters belonging to *Lex Parliamenti*, on the ground that the High Court of Parliament "hath no higher" was out of date even in the seventeenth century. He proceeded to observe as follows about the views of Coke and Balckstone :

"The views belonged to a time when the distinction between the judicial and legislative functions of Parliament was undrawn or only beginning to be drawn and when the separation of the Lords from the Commons was much less complete than it was in the seventeenth century. Views about the High Court of Parliament and its powers which were becoming antiquated in the time of Coke, continued to be repeated far into the eighteenth century, although after the Restoration *Principles began to be laid down which were more in accord with the facts of the modern Constitution. But much confusion remained which was not dismissed by the use of the phrase "privileges of Parliament."*

Sir Erskine May went on to indicate the three notions resulting from this "confusion of thought" in the course of English Constitutional history. He wrote :

“Three notions arise from this confusion of thought :

(1) That the courts, being inferior to the High Court of Parliament, cannot call in question, the decision of either House on a matter of privilege.

(2) That the *lex et consuetudo parliamenti* is a separate law, and, therefore, unknown to the Courts.

(3) That a Resolution of either House declaratory of privilege is a judicial precedent binding on the courts.”

It is surprising that even after what Sir T. Erskine May had attributed to confusions of thought, which had apparently been cleared up by the time that Sir Erskine May brought out his famous treatise in 1844, these very notions should have been put forward by the counsel for the State Assemblies as the law applicable in this country under our written Constitution where there ought to be no place for confusion.

6. Misconceptions Removed

During the course of a bitter struggle for power between the King and the Commons in Seventeenth Century England, utterly novel claims were made on behalf of the House of Commons to combat the pretensions of Stuart Kings to rule by Divine Right. In this period, Charles the First was tried and executed. Even after the Restoration of Monarchy, but soon after the revolution of 1688, when James II was driven from England, two of the King's Judges, one of whom was believed to be a Royalist, were called to the Bar of the House and punished (See *Jay v. Topham*, 12 State Tr., 822). But, these episodes in English history have been regarded by British constitutional lawyers and Judges as examples of gross and unconstitutional excesses and of clear abuse and usurpation of powers during a passing phase. The British Parliament itself proclaimed, at the

Restoration, that all that had taken place during the "Interregnum" was to be blotted out of the annals of British Constitutional history. British Judges had declared that the punishment of two of the King's Judges stood on no better footing. What were thus proclaimed and declared to be breaches of the British Constitution could not possibly furnish any legally existing basis at all for even a claim by the House of Commons to possess or exercise such powers in 1950. The British Constitution was placed on a new and stable foundation by the Act of Settlement, 1701, and then the position of the judiciary became firm and secured. No repetition of unconstitutional acts of the kind indicated above could be thought of in England after that. Lord Denman, in *Stockdale v. Hansard* (1839), referring to the above mentioned punishment of the two Judges, said :

"Our respect and gratitude to the Convention Parliament ought not to blind us to the fact that this sentence of imprisonment was as unjust and tyrannical as any of those acts of arbitrary power for which they deprived King James of his Crown."

Misconceptions which could result from citing and representing instances of gross and flagrant violations of the Constitution in England, during a past era of severe conflict, as examples of what was legally permissible there, could only be removed by a cool examination and dispassionate consideration of the whole position, after considerable study and research, such as the one which took place during the reference in the Supreme Court.

7. Modern Concept of Parliamentary Privilege Clarified

The concept of a privilege of the House of Commons has itself undergone a change in the course of British Constitutional

History. The origin of the concept of a "privilege", as a grant by the King to the representatives of his people, is borne out by the customary "humble petition" by the Speaker to the King and a repetition of the grant afresh at the commencement of each Parliament even today in England. Sir Erskine May has, dealing with this origin, observed :

"What originated in the special protection of the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognised privileges."

During the struggle between the King and the Commons, these privileges were used as means of defence by the House of Commons against the encroachments attempted by the King upon the rights of the representatives of the people. The King's Courts, presided over by Common Lawyers, upheld claims to these privileges against the King, and, thereby converted them into legally recognised and enforceable rights. Later, when they were sought to be abused and utilised at times as weapons of attack against the rights of subjects, the British Parliament stepped in, and, by means of Parliamentary Privileges Acts of 1737 and 1770, restricted and checked misuse of claims to "privilege" by members of Parliament who could not obtain, it was clarified, immunity from legal proceedings under the "pretence" of privilege. Thus, the British Parliament has itself tried to confine claims to privilege to their proper sphere and purpose.

Our Supreme Court, after considering the whole history of Parliamentary Privilege in England, thus stated the concept which emerged finally in the nineteenth century when an equilibrium was reached and the limits of privilege were "prescribed and accepted by Parliament, the Crown, and the Courts":

“The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are ‘absolutely necessary for the due execution of its powers’. They are enjoyed by individual Members because the House cannot perform its function without unimpeded use of the services of its members; and by each House for the protection of its Members and the vindication of its own authority and dignity.”

It may be observed that English Judges, who have never lagged behind in protecting fundamental rights and freedoms of subjects, even though these are not enumerated in a written Constitution like ours, had also rejected long ago the concept of any Parliamentary privileges enjoyed “against the rights of the people under the laws of the land”. One is reminded here of the remark of Sir C. K. Allen, in a foreword to a book by Mrs. Seighart entitled “Government by Decree” : “In saying that ‘no liberty is secure without a court to uphold it’ Mrs. Seighart utters a simple truth which is confirmed by a thousand years of English history.”

**8. The Result : See : Special Reference No. 1 of 1964
(A. I. R. 1965 S. C. p. 745).**

The Supreme Court of India, following the law under the British Constitution which, in this respect, differs from the American Constitution and law, upheld the claim of the Houses of State Legislature to punish strangers for contempts committed outside the Houses of Legislature, subject to the ultimate supervisory jurisdiction of the High Courts and the Supreme Court. It made it clear that Judges of the High Court not only enjoy protection against the discussion of their conduct as Judges in Houses of the State Legislature by reason of the specific provisions of Article 211 of the Constitution,

but also immunity from proceedings by a House for any alleged contempt by merely performing a judicial function in exercise of their duties. The opinion given to the President was :

“The existence of a fearless and independent judiciary can be said to be the very basic foundation of the Constitutional structure in India, and so, it would be idle, we think, to contend that the absolute prohibition prescribed by Article 211 should be read as merely directory and should be allowed to be reduced to a meaningless declaration by permitting the House to take action against a Judge in respect of his conduct in the discharge of his duties.”

9. Supremacy of the Constitution

The supremacy of the Constitution, interpreted finally by the courts, is one of the ways in which harmonious working of the Constitution is secured, and the so-called “dualism”, which must give rise to constitutional conflict, is avoided. Whatever may be the position under the British Constitution in 1950, there is no room for contending that such “dualism” exists under our written Constitution. Any attempt to introduce the discarded dualism into our Constitution will add to confusion and provide a breeding ground of friction between the different organs of the State. The so-called dualism also implies absence of remedy for the citizen, even if he is imprisoned for having done something which could not possibly constitute a contempt of a House of Legislature, whenever the Speaker of a House issues a general warrant and thus precludes the courts from scrutinising the grounds upon which imprisonment was ordered.

On the basic question of the supremacy of our Constitution one may point out the following observations of our Supreme Court :

“In dealing with this question, it is necessary to bear in mind one fundamental feature of a Federal Constitution. In England, Parliament is sovereign ; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament, and that the right or power of Parliament extends to every part of the Queen’s dominions (The Law of the Constitution by A. V. Dicey, p. xxxiv). On the other hand, the essential characteristic of federalism is ‘the distribution of limited executive, legislative, and judicial authority among bodies which are coordinate with and independent of each other’. The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the Legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Nor is any change possible in the Constitution by the ordinary process of federal or State Legislation (The Law of the Constitution by A. V. Dicey, p. Lxxvii). Thus, the dominant characteristic of the British Constitution cannot be claimed by a Federal Constitution like ours.”

It also observed :

“In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is

no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said Article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself. Legislators, Ministers, and Judges all take oaths of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense.”

10. A Summary

The Constitutional position of our High Courts, in the context of constitutional supremacy and with special reference to the power of Houses of State Legislatures to punish their alleged contempts, emerging after the historic opinion of the Supreme Court, may be briefly summarised, as follows :

(i) Political sovereignty of the whole people of India was converted into legal sovereignty of a democratic Republic by the Constitution of India.

(ii) The Constitution of India may be spoken of as an embodiment of what political philosophers have called the “Permanent” or “Real” Will of the whole people. The Constitution is legally Supreme.

(iii) The following consequences flow from the supremacy of the Constitution :

(a) The subordination of all the organs of State to the Rule of Law contained in the Constitution. No person or authority or organ of State can claim to be above the law or to flout the law contained in it. They are all equally subjected to it.

(b) The legality of the acts of every person or authority in the State can be tested with reference to the Paramount or Fundamental law contained in the Constitution.

(c) Hence, in such a Constitution, at given moments, as Prof. Willis observes about the American Constitution, the supremacy of the judicial organ becomes manifest when it expounds and becomes the mouth-piece of the Fundamental or Paramount Law with reference to which the competence and legality of all the actions of other organs is determined. This is, however, a supremacy in the judicial field only.

(iv) Even though there is no clear cut separation of powers in our Constitution, there is a division, enumeration, and specification of all the essential powers of each organ, whether Executive, Legislative, or Judicial, in the Constitution. In any case, unspecified and merely implied or assumed powers cannot override specified powers.

(v) The power of judicial supervision, so that no organ oversteps its orbit of authority or power, is necessarily a judicial function under the Constitution. The duty of determining the frontiers of all kinds of authority—Executive, Legislative, Judicial—is vested in the judicial organs.

(vi) The safeguarding of fundamental rights is especially entrusted to the judicial organs which are given special powers

and special obligations are cast upon them for this purpose under Articles 32 and 226 of the Constitution; and, an unconstitutional invasion of these rights by a House of a State Legislature, in purported exercise of power to punish contempts, is open to challenge before Courts.

(vii) The power of supervision over all courts and Tribunals in a State is also specifically conferred upon the High Court of that State under Article 227 of the Constitution.

(viii) As punishment for contempt even when awarded by a State Legislature is a quasi-judicial function, its orbit and due exercise are necessarily placed under the supervision of the judicial organ the aid of which may be invoked by an aggrieved person.

(ix) No orbit is invaded or exceeded when a power is legally and justly and properly exercised by any authority.

(x) The object of the judicial function is not to destroy but to safeguard and fortify the frontiers of each orbit and to affirm, reinforce, and support all just and correct exercise of powers within each orbit.

(xi) The orbit of Parliamentary Privilege and powers, under Article 194(3) of the Constitution of India, can only be one which can be fitted into a Constitution with other well defined and expressly specified orbits of power and authority. It cannot possibly contain within it any special conventional rule governing the relationship of the House of Commons with the King's Courts under a bygone British Constitutional set up which had a "King in Parliament" and the "King's Courts". Such rules cannot exist within a Constitution where there is neither a King nor the King's Courts, but a federal structure of Government ensuring judicial supremacy in the sense

pointed out above. In other words, the orbit indicated by the words "shall be those of the House of Commons", in Article 194(3) of the Constitution, is restricted to those powers and privileges which can reasonably co-exist with express provisions of the Constitution.

(xii) The High Court of a State is an instrument of the Paramount Authority to ensure the Supremacy of the Constitution, and the existence of its express power of supervision, over the quasi-judicial sphere, including that of the U. P. Legislative Assembly's quasi-judicial action in punishing its contempts, cannot be denied under the Constitution as it exists.

(xiii) The exercise of its constitutional power by the High Court can be challenged by an appeal to the Supreme Court of India but in no other manner.

(xiv) The limitation of the power of High Courts to interference in cases where jurisdictional errors may be committed by Houses of the Legislature in punishing contempts is consistent with our Constitution, but the elimination of this power of supervision would erect fortresses of absolutism which would be inconsistent with the letter, the tenor, the spirit, and the express objects of our Constitution.

II. Ultimate Guardians of the Constitution

While the Supreme Court and the High Courts in India staunchly uphold the Supremacy of the Constitution, with judicial independence as its logical corollary, its preservation ultimately depends upon the wisdom, the understanding, the will, and the vigilance of citizens who have made the Constitution what it is and who can also change it. If the legal supremacy of the Constitution is to

serve the grand and noble objects set out in the Preamble to our Constitution, it must be backed by a reverence by the citizens for the Law—described as the “King of Kings” by our jurists—and for the function and position of those who are constitutionally charged with the duty of expounding its meaning. Genuine respect for these can only spring from an understanding of the true purposes of the Law which expresses our notions of Right and Wrong, Just and Unjust. European jurists have used various terms (Jus, Droit, Diritto, Recht) to signify what is included also in our view of the Law as “Dharma” or a binding force akin to religion. Our ancient concept of the Law, however, goes beyond what these terms stand for. It embraces that principle of “Virtue”, as Montesquieu called it in his “Espirít des lois”, which distinguishes a healthy democracy from other forms of government. The late Prime Minister Nehru, one of the great thinkers of the modern age, once said :

“You may define democracy in a hundred ways, but surely one of its definitions is self-discipline of the community. The less the imposed discipline and the more the self-discipline the higher the development of democracy.”

This discipline consists of correct habits of thought and action illumined by an adequate understanding of the Law and its operations. So long as these are not sufficiently developed and firmly established, the principles upon which Constitutional Supremacy rests will not be out of danger. The moral prestige, and, indeed, the very existence of our Democratic Republic is bound up with these principles which must be properly understood and defended by ordinary citizens for whose welfare and protection they are designed.



Procedural Law in Smritis

By

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THE basic principles of Truth, Reason and Justice which provide foundation for the social order are immutable. They have been and shall be the same in all ages and in all climes. In Vedic Samhitas (10000 to 5000 B.C.) which in the words of Prof. Maxmueller represent “babblings of humanity” Rishis have sung panegyrics to the glory of “Ritam” or “Satyam”. The first and foremost injunction to the disciples leaving the portals of ancient *Gurukulas* on the eve of their entering the social order was “Never to deviate from the path of truth—सत्यान्नप्रमदितव्यम्”

The immanence of truth was affirmed by the *Smritis* which declare “सत्यान्नास्तिपरोधर्मः—Observance of truth is the highest code of conduct.” “Truth though absolute has many facets—एकं सत्यम् विप्रा बहुधा वदन्ति” say the Upanishads. “Truth is subtle—धर्मस्य सूक्ष्मो गतिः” It needs a discerning eye to discover it. In Mahabharat when

questioned by Yudhishtir as to what is truth, what is untruth and when should a person tell the truth Bhishma says,

तादृशोऽयमनुप्रश्नो यत्र धर्मः सुदुर्विदः ।

दुष्करं चापि संख्यातुं तर्केणात्र व्यवस्यति ॥

“The question you have put to me is a difficult one because it is difficult to say what is righteousness or truth. It is not easy to describe it.” (Mahabharat, Chapter 105, S. 9). He goes on

सत्यस्य वचनं साधु न सत्यात् विद्यते परम् ।

यत्तु लोके सुदुर्ज्ञेयं तत्ते वक्ष्यामि भारत ॥

भवेत्सत्यं न वक्तव्यं वक्तव्यमनृतं भवेत् ।

सत्यानृतं भवेत्सत्यं सत्ये वाप्यनृतं भवेत् ॥

“To tell the truth is righteous. There is nothing higher than truth. But where falsehood prevails as truth, truth should not be said there. There, again where truth passes for falsehood, even falsehood should be said.” (Mahabharat Shanti Parva, Chapter 109, S. 9, 4 and 5).

“Law” says Aristotle, “is either universal or special. Special law consists of the written enactments by which men are governed. The Universal law consists of those unwritten rules which are recognised among all men.” Law, however, in common parlance, can be described as a set of rules framed by the society in its best wisdom to regulate the conduct of its members *inter se* and *qua* the society itself. The primary purpose of Law is to assist in sifting truth from falsehood, to serve the cause of justice and to uphold the social order based on justice. “धारणात्त्वर्ममित्याहुः तस्माद् धारयते प्रजाः”—महाभारते—Law provides a recognised channel for the enforcement of the rules of morality recognised by public opinion in any community.

The recognition of fixed rules compendiously known as Law helps in the administration of justice as it provides a safeguard against individual aberrations. The necessity of conforming to

publically declared principles protects the administration of justice to a large extent from the disturbing influence of improper motives. Law is no respecter of persons. It has, therefore, to be certain and uniform. "To seek to be wiser than the laws" says Aristotle, "is the very thing which is by good laws forbidden." For the enforcement of legal principles in the dispensation of justice uniformity and certainty is desirable not only in the application of those principles but also in the procedure for their application. And there lies the importance of procedure and fixed rules of evidence which help the court in unravelling the complexities of truth and in applying the principles of substantive law in the adjudication of issues.

In the ancient literature of "*Smritis*" which came into existence at the dawn of human civilisation (some time between 1000 and 500 B.C.) we find an elaborate code of civil and criminal procedure and detailed rules of evidence. Some of these provisions bear striking resemblance with the corresponding rules in modern laws of evidence and procedure. It is not possible in this brief article to give an exhaustive summary of those rules. But a few of them by way of illustration are quoted below from the Institutes of Manu (Dr. Ganganath Jha Edition) the most ancient and authoritative amongst the "*Smritis*".

Constitution of the Court

सोऽस्य कार्याणि संपश्येत् सभ्यैरेव त्रिभिर्वृतः ।

सभामेव प्रविश्याग्यामासीनः स्थित एव वा ॥ (Chapter VIII, S. 10)

"The Judge shall enter the august court with a dignified demeanour accompanied by three learned men capable of giving good counsel and having occupied the chair of justice investigate the suits."

Compare this provision with the modern concept of open courts and jury trial.

Commencement of trial

धर्मासनमधिष्ठाय संवीताङ्गः समाहितः ।

प्रणम्य लोकपालेभ्यः कार्यदर्शनं मारभेत् ॥ (Chapter VII, S. 23)

“Having occupied the chair of justice with his body well attired and mind composed he shall salute the guardian deity (chair of justice) and then proceed with the trial.”

Mark the importance assigned to judicial robe and preservation of judicial equilibrium.

General rules regarding judicial procedure

सत्यमर्थं च संपश्येद् आत्मानम् अथ साक्षिणम् ।

देशं रूपं च कालं च व्यवहारविधौ स्थितः ॥

यथा नयत्यसक्पातैः मृगस्य मृगयुः पदम् ।

नयेत्तथाऽनुमानेन धर्मस्य नृपतिः पदम् ॥ (Shlokas 44—45)

“When engaged in judicial proceedings the Judge shall keep his eye upon the truth, upon the object, upon himself, the witnesses and upon the place, the time and aspect. Just as a hunter discovers the footprints of a deer by the drops of blood, so should the Judge discover the truth by means of inference.” In other words the Judge will sit with an open mind concentrating his discerning eyes on the issue before him, its surrounding circumstances and evidence and shall arrive at the truth by logical inferences flowing from the direct and circumstantial evidence.

Evidence (Who is a competent witness)

आप्ताः सर्वेषु वर्गेषु कार्याः कार्येषु साक्षिणः ।

सर्वे धर्मविदोऽलुब्धाः विपरीतास्तु वर्जयेत् ॥

नार्थं सम्बन्धिनोनाप्ता न सहाया न वैरिणः ।

न दृष्ट दोषाः कर्तव्या न व्यध्याता न दूषितः ॥

“In all civil suits trustworthy men, irrespective of castes, fully conversant with morality and free from avarice should be made witnesses. Interested persons, relatives and helpers of the suitor, persons of proved corruption, a minor, one who is intoxicated or demented or tormented by some powerful feeling of love or rage, one who has renounced the world and the Judge shall not be called as witnesses. However, in the event of proper witnesses not forthcoming evidence may be given by a minor and an interested person in the suitor. In the case of anything done in the interior of a house or in a forest or in the case of injury to the body—any person who may be cognizant of the facts may give evidence on behalf of the parties to the suit.” (Chapter VIII, S. 63 to 69).

साहसेषु च सर्वेषु स्तेय संग्रहणेषु च ।

वाग्दण्डयोश्च पारुष्ये न परीक्षेत् सान्निः ॥ S. 72

“In criminal cases of violence, theft, adultery, assault etc., the character of the witnesses shall not be investigated.”

Compare this provision with section 54 of the Evidence Act.

Evidence to be direct

समक्षदर्शनात्साक्ष्यं श्रवणाच्चैव सिध्यति ।

तत्र सत्यं ब्रुवन्साक्षी धर्मार्थाभ्यां न हीयते ॥ S. 74

“The person who happens to see or hear anything relevant to a case he should speak out exactly as to what he has seen or heard.”

Evidence to be relevant

स्वभावेनैव यद् ब्रूयुस्तद्ग्राह्यं व्यावहारिकम् ।

अतोयदन्यद्विब्रूयुः धर्मार्थं तद् पार्थक्यम् ॥ S. 78

“What the witnesses state naturally in relation to the question in issue alone should be accepted. Apart from that what they state from consideration of righteousness, etc. is useless.”

Examination of witnesses

सभान्तः साक्षिणः प्राप्तानर्थि प्रत्यर्थि सन्निधौ ।

प्राड् विवाकोऽनुयुंजीत विधिनानेन सान्त्वयन् ॥ -S. 79

“After administering oath the Judge shall question the witnesses present in court in the presence of the plaintiff and the defendant gently asking them to declare freely and truly whatever they know about the subject-matter of the suit.”

Assessment of evidence

बाह्यैविभावयेऽलिङ्गैर्भावमन्तर्गतं नृणाम् ।

स्वर वर्णाङ्गिता कारैश्चक्षुषा चेष्टितेन च ॥

आकारैरिङ्गितैर्गत्या चेष्टया भाषितेन च ।

नेत्र वक्त्र विकारैश्च गृह्यतेऽन्तर्गतं मनः ॥—S. 25, 26

“He shall discover the internal disposition of the witnesses by external signs ; by variations in their voice, colour aspect, gait and gestures and also by looking into their eyes because the inner mind is indicated by such variations.”

It is a detailed instruction for the Judge to derive conclusions from the demeanour of the witnesses.

Ex-parte order

“A defendant in a civil suit who does not appear without valid reasons for three fortnights to answer the claim shall be saddled with an *ex-parte* decree with proportionate costs.

Where there is no oral or documentary evidence the case can be decided by giving 'Shapath' to the parties." (S. 107 and 109).

Decision

जातिजान्पदान् धर्मान् श्रेणीधर्माश्च धर्मवित् ।

समीक्ष्य कुलधर्माश्च स्वधर्मं प्रतिपादयेत् ॥—S. 41

"The Judge knowing his duty shall determine the law for each suitor after examining the provincial laws, the laws of the guilds and families." In other words in order to apply the correct law in deciding the "lis" the Judge shall take into account the provincial laws, laws of guilds and the families.

Criminal trial—Punishment

अनुबन्धं परिज्ञाय देशकालौ च तत्त्वतः ।

सारापराधौ चालोक्य दण्डं दण्ड्येषु पातयेत् ॥—S. 126

"After having ascertained the motive of the crime, the time and place when and where it has been committed and having taken into consideration the condition of the accused and the nature of the offence the Judge shall inflict punishment on the guilty."

All the relevant considerations which should weigh with a Judge dispensing justice in a criminal charge are succinctly mentioned in this couplet.

वाग्दण्डं प्रथमं कुर्यात् धिक्दण्डं तदनन्तरम् ।

तृतीयं धनदण्डम् तु बधदण्डम् अतः परम् ॥—S. 129

"First of all he shall inflict punishment in the form of a reprimand, then in the form of a reproach and thirdly in the form of a fine, and lastly a corporeal punishment." In the context 'बधम्' signifies corporeal punishment and not necessarily capital punishment. This

shows that corporeal punishment was to be inflicted as a last measure only when the warning, reproach and fine were not considered adequate to meet the ends of justice. It is difficult to find a more humane system of dealing with the delinquents.

Manu enumerates causes forming basis of legal proceedings under 18 heads covering a wide range of issues relating to property, debts, contract, sale of goods, partition, partnership, disputes between master and the servant, landlord and the tenant, disputes regarding boundaries and criminal charges of assault, theft, violence, adultery, gambling and betting.

Narad and Brihaspati who flourished several centuries after Manu have expanded this list and have given a fuller description of legal procedure. Narad enumerates seven faults of a plaintiff and Brihaspati deals with the technique of drafting of a plaintiff and written statement and serving of interrogatories on the opposite parties. Brihaspati recognises the importance of 'Yukti'—reasonable logic in the application of the legal principles to the facts of a case. He says that "the decision of a case on the basis of unadulterated scriptural law divorced from reasonable logic results in causing damage to the law itself".

केवलं शास्त्रमाश्रित्य न कर्तव्यो विनिर्णयः ।

युक्तिहीने विचारेतु धर्महानिः प्रजायते ॥

It is not within the scope of this article to give a detailed account of the legal procedure and rules of evidence enunciated in the various "*Smritis*" (Yagyabalka, Narad, Vashishtha etc.). A few illustrations have been given above only to show that the ancient Hindu law givers were fully conscious of the importance of the fundamentals of legal procedure and evidence in the administration of justice.

The Moral of our Judicial Pronouncements

By

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THE vast period of a century of judicial history of our High Court, illuminated by successive judges of great talents and calibre, have tended to evolve a policy reminiscent of their outlook in dispensing justice between man and man. The dawn of political freedom, achieved in 1947, provided a test of the strength and soundness of that policy and also an occasion to judge whether the doctrine of pure natural justice that had held its sway for over three quarters of a century needed any change in its basic foundations or applied in an equal degree to the altered conditions as well.

The policy and standard, pursued by our High Court before the advent of independence, derived their sanction from the highest

ideals of judicial morality which the human conscience could approbate. With the advent of independence a new panorama was opened which promised a wider scope for our instincts in the judicial as well as the political and social spheres. The dominant urge then was to enhance and enrich the international prestige of our country for its cult of broad-minded justice as the foundation of its judiciary. No doubt, the judicial structure to be erected in our new-born State for the administration of its laws could be taken as the index of our sense of uprightness and public justice. It was to be a mirror reflecting the honour and applause which the country was destined to earn in the councils of the world. I would every moment be moved by this larger consideration and strive to advance our prestige to achieve the highest peak of judicial perfection and dignity.

Fortunately, there was no difficulty in the wake of our achievement of political freedom in following the standard that had governed our legal role for three quarters of a century before. A review of that standard would, in effect, be a review of the rule and policy adopted in our Courts in the post-independence period also.

That, then, is the standard and policy which have permeated through our judicial administration with surprising uniformity and have remained unaffected by events and forces tending to shake its functional lubricity. It is a synthetic concept born of a highly cultured outlook of generations of judges who have revealed an astounding consistency of faith and conviction in the mastery of the role of human conscience in solving human affairs.

The Judge's outlook, to which I have just referred, is foreshadowed in the brief phraseology of the oath he has to take on ascending the Bench. The terms of that oath are simple and explicit—"shall perform my duties to the best of my knowledge,

ability and judgment." On the assumption that, before a person is appointed to the Bench, his knowledge, ability and judgment have already been tested and found to conform to a certain standard, he is required to declare that he would make the best use of them in discharging his work. The very fact of his appointment is a testimony to his being equipped with those qualities, and any suggestion or assertion that he has not acted well is understandable only on the hypothesis that he failed to make a judicious use of them.

It is essential to visualise the real implications of the terms of a judge's oath in the abstract, as also of his promise to act to the best of them, when he has sat on the Bench. They must be conceived both in their individual and also in their collective sense. The word 'knowledge' would refer to the entire information which the declarant has of things generally and of the facts and law relevant to the cause before him. The term 'ability' would refer to the judge's capacity and efficiency, varying with each man's educational and cultural attainments, and the last word 'judgment' to the ultimate result of the relative functioning of the first two qualities involving a co-ordination of ideas into a logical product. Collectively the phrase would imply a state of perfection achieved by a balanced working of the physical, mental and moral powers of the individual and calculated to adapt him to the technique of a judicial career.

It is in the judge's oath in the above terms that the real symbol of his faith is enclaved. It is there that his moral self comes to play in harmony with his mental make-up. It is there that a ground is furnished both to the outside world as also to that ethereal Power and Light, the conscience in him, to pronounce whether he has behaved well or otherwise. His conduct

becomes primarily a matter between him and his Maker and is only afterwards a matter between him and any one else.

But once you make it a matter for the sanction of your conscience, which is another name for the sanction of the Supreme Being, give Him any name you like, and you have no escape from that, you bring yourself in sight of a vast ethological panorama, before which you stand almost in chains and secluded ruthlessly from all alien thoughts and where you simply reveal in your passion for the search of truth. Of that truth there are no variations and no adjustments, except in so far as they may be influenced by variations in the degree of different persons' training, culture and experience and their resultant outlooks. The conflict in judicial orders on the same or similar materials has its origin not in any conceivable changes in the essence of that truth but only in the diversity of intellectual equipments which different judges possess. Such conflicts have no worries for the judge who proceeds on his work in complete allegiance to the sovereignty of his oath.

Such a task may seem to be fettered by imaginary handicaps, and it is there that a judge's courage is put on its trial. He would of course be anxious to pass the right judgment, but, not unnaturally, he may also wish that judgment to be welcome to both the parties, without his swerving in the least from the proper track. But the matter before him may be such or the parties before him may be so conservative about the justness of their claims that it may never be feasible to please them both. With rare exceptions, I found the parties before me equally earnest and assertive, and I failed, as I had to fail, to please both of them. I, however, felt that I had done my part, if I did not provoke such comments as 'hasty', 'impatient', 'discourteous' or 'obstinate', although it was too much

to hope being applauded by the losing party, whatever was the reaction of the losing counsel.

But where there is a clash between two ideas, one of acting to the best of one's knowledge, ability and judgment and the other of satisfying both the parties and their helpers—a practical impossibility there is no question before a Judge of making a choice. His faith, his creed and his mission leave him no option, and he turns blindfolded to the only unalterable course open to him of acting to the best of his knowledge, ability and judgment. He then completely detaches himself from his surroundings and resigns himself to that infallible source of wisdom for the judgment and decree that he has to pass. He is wholly indifferent to the opinion of the gallery or the consequences that may follow and has indeed the complacency of obeying the dictates of his conscience alone. He knows these to be inevitable, but he also knows that such reactions only demonstrate the dignity and the sacredness of the promise he made on the first day of his work.

This then is the sublime task, a determined scorn of fear of the entire surrounding and a concentrated appeal to that unheard voice, through which the Almighty Being conveys His message to His human agent as the most natural culmination of the faculties with which He has endowed him. The Judge is inspired to speak out his thoughts in grim detachment from all artificial calculations. His mind works in the open, not behind a screen. He is fearless in his words and explicit in his orders. He has neither the time nor the mind to care for the reactions to his bearing or to his work, and his creed drives him into one appointed channel, leaving him helpless to think otherwise.

There can be only one moral, proclaimed by the verdicts of a Judge moved by the above ideals. As the only source of your

becomes primarily a matter between him and his Maker and is only afterwards a matter between him and any one else.

But once you make it a matter for the sanction of your conscience, which is another name for the sanction of the Supreme Being, give Him any name you like, and you have no escape from that, you bring yourself in sight of a vast ethological panorama, before which you stand almost in chains and secluded ruthlessly from all alien thoughts and where you simply reveal in your passion for the search of truth. Of that truth there are no variations and no adjustments, except in so far as they may be influenced by variations in the degree of different persons' training, culture and experience and their resultant outlooks. The conflict in judicial orders on the same or similar materials has its origin not in any conceivable changes in the essence of that truth but only in the diversity of intellectual equipments which different judges possess. Such conflicts have no worries for the judge who proceeds on his work in complete allegiance to the sovereignty of his oath.

Such a task may seem to be fettered by imaginary handicaps, and it is there that a judge's courage is put on its trial. He would of course be anxious to pass the right judgment, but, not unnaturally, he may also wish that judgment to be welcome to both the parties, without his swerving in the least from the proper track. But the matter before him may be such or the parties before him may be so conservative about the justness of their claims that it may never be feasible to please them both. With rare exceptions, I found the parties before me equally earnest and assertive, and I failed, as I had to fail, to please both of them. I, however, felt that I had done my part, if I did not provoke such comments as 'hasty', 'impatient', 'discourteous' or 'obstinate', although it was too much

to hope being applauded by the losing party, whatever was the reaction of the losing counsel.

But where there is a clash between two ideas, one of acting to the best of one's knowledge, ability and judgment and the other of satisfying both the parties and their helpers—a practical impossibility there is no question before a Judge of making a choice. His faith, his creed and his mission leave him no option, and he turns blindfolded to the only unalterable course open to him of acting to the best of his knowledge, ability and judgment. He then completely detaches himself from his surroundings and resigns himself to that infallible source of wisdom for the judgment and decree that he has to pass. He is wholly indifferent to the opinion of the gallery or the consequences that may follow and has indeed the complacency of obeying the dictates of his conscience alone. He knows these to be inevitable, but he also knows that such reactions only demonstrate the dignity and the sacredness of the promise he made on the first day of his work.

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There can be only one moral, proclaimed by the verdicts of a Judge moved by the above ideals. As the only source of your

light and guidance for dispensing justice in human disputes you have to know of no other authority except that of your own conscience, directing you to choose the form, the scope and the magnitude of your orders and reject fearlessly all other factors likely to influence your mind. All such fears that may arise from your rigid adoption of this rule must be discounted in contempt, and your sole objective must be the approbation of your own instinctive impulse and your sole satisfaction must be the endorsement of your conduct by that God-granted apparatus which you carry in yourself as an unflinching beacon-light throughout your life in this world.



Origin and Nature of Courts

By

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WHAT is a 'Court' ? COURT (*Curia*)¹ formerly signified the King's palace or mansion, a place where he remained with his ordinary retinue and often sat in person to transact the judicial business of his kingdom. The style of the Court in England in the eleventh and twelfth centuries was *curia regis*, *aula regia*, *aula regis*, or *coram ipso rege*, as it was also movable with the King's Household. The 'Court' thus gradually came to be associated with the place where, or the authority by which, justice was administered; and now, it is more especially the place wherein justice is judicially administered.² The 'Court' is an assembly of Judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, criminal, ecclesiastical, military or naval.³ The judge alone is,

¹ *Curia* (Lat.): *cour* (Fr.): *koert* (Dutch): *gericht* (Ger.).

² *Blackstone's Commentaries*, Vol. III, p. 24.

³ *Shorter Oxford English Dictionary*, Vol. I, p. 410.

however, "not the whole Court. He is only a component though important part of the wider concept which constitutes a 'Court'. The individuality of the Presiding Officer is essentially different from the impersonal entity of a Court."¹ This is the reason why jurisdiction, territorial, or with reference to subject-matter, is conferred, by law, on court and not on judge.

Courts are created by the authority of the Sovereign as the fountain of justice. This authority is usually exercised by the Constitution of a country or by Statute, Act, Charter, Letters Patent, or Order-in-Council. An Act of Parliament or other Legislature is necessary to create a Court.² A Court, in the strict sense, is a tribunal which is a part of the ordinary hierarchy of tribunals established and maintained by a State by or under its Constitution to exercise its judicial power. The Courts perform all the judicial functions of the State, except those that are excluded by law from their jurisdiction.³

A 'Court' is distinguished from a mere advisory or a fact-finding body, in that it has the power to pronounce a binding judgment and to adjudicate upon the rights and liabilities. It also differs from many Tribunals which have a judicial or quasi-judicial character. The following *characteristics* distinguish a 'Court' from analogous bodies:

(i) A Court must exercise jurisdiction over persons by reason of the sanction of law, and not merely by the voluntary submission to its jurisdiction, e. g., arbitration.

(ii) It must be, expressly or impliedly, recognised by law as a Court. The mere judicial manner of the exercise of

¹ 1966 A.W.R. 197 (201), *per* Gyanendra Kumar, J. (All. H. C.).

² See *Halsbury's Laws of England*; Simond's III-Ed., Vol. 9, p. 344.

³ A.I.R. 1961 S.C. 1669 (1681), Hidayatulla, J.

functions is not enough. Thus, the statutory bodies exercising quasi-judicial functions are not Courts.

(iii) A Court must generally be open to the public.¹ The publicity of judicial proceedings is regarded as a guarantee of public security that justice will be properly administered,² and promotes confidence of the public in the impartial administration of justice.

There are also the following essential characteristics of Courts; though these may be necessary adjuncts of other judicial or quasi-judicial bodies :

(i) A Court must be impartial and free from bias and prejudice; and its Presiding Officer should 'regulate the proceedings of the Court and maintain its decorum' 'in consonance with the prestige of the Court and not in an angry, abusive and ignoble form, which may undermine the very foundation on which exists the edifice of the administration of justice.'³

(ii) A Court must be independent of and immune from outside influence.⁴

¹ *Scott v. Scott*, 1913 A.C. 427.

² *McPherson v. McPherson*, 1936 A.C. 177 (P.C.).

³ 1966 A.W.R. 197, *per* Gyanendra Kumar, J. (All. H. C.).

⁴ According to *Shastras*, a Judge should keep in subjection to himself his lust, anger, avarice, folly, drunkenness and pride; neither he should be seduced by the pleasures of the chess, nor be addicted to play, nor be always engaged in dancing, singing, and playing on musical instruments, nor he must sleep in daytime, nor practise the drinking of wine, nor he should take, nor long for, the property of another, nor should envy another person's superior merit, nor criticise and abuse any person. Providence created the Judge, who must not be considered a mere man, but be looked upon as '*Dewata*' in a human form. Providence also created punishment; and if the judge inflicts it according to *Shastras*, the subjects become obedient to law; if he omits to do so, the Kingdom and property become ruined. (See *Halhed's Code of Gentoo Laws*, (1776-ed., Lond.), pp. 1/52-53, 50)

(iii) A Court must not enter into questions of social ideology or party politics.¹

(iv) In most countries, a Court is generally bound by its own precedents and invariably by the precedents of superior courts. The scale of justice must be kept "even and steady, and not liable to waiver with every new judge's opinion."²

(v) The power to punish for contempt of itself belongs only to a Court.³

Ordinarily, certain courts have a special status by being recognized as Courts of Record. A *Court of Record* originally meant one whose acts and proceedings were enrolled in parchment. 'Record is a writing in Parchment, wherein are enrolled Pleas of Land or Common Pleas, Deeds, or Criminal Proceedings in any Court of Record.' In other words, the proceedings of a Court of Record, preserved in its archives, are called records, and are conclusive evidence of that which is recorded therein.

A Court of Record is, in recent days, a Court whose acts and proceedings are enrolled for a perpetual memorial and testimony. These records are of such high authority that their truth cannot be called in question;⁴ though the Court of Record itself may amend the clerical slips and errors. This is a privilege they share in common with a supreme legislature. The accuracy of the records of either cannot be challenged by any other authority.

¹ A.I.R. 1951 All. 257 (F.B.), *per* Sapru, J.

² *Blackstone's Commentaries*, Vol. I, p. 69.

³ A.I.R. 1956 S.C. 66, Bhagwati, J.

⁴ *Termes de la Ley*, s. v. Record.

⁵ *Blackstone's Commentaries*, Vol. III, p. 25.

⁶ *Stephen's Commentaries*, Vol. III, p. 5.

All superior Courts in India are considered Courts of Record. The High Courts, Courts of Judicial Commissioners and the Supreme Court are recognized as Courts of Record by the Constitution itself.¹ The Courts of Record in England are divided into Superior and Inferior Courts of Record; the latter so called because their proceedings are subject to the supervision of the High Court of Justice, exercised by means of writs of mandamus, certiorari and prohibition.²

Certain Courts are expressly declared by Statutes to be Courts of Record. In case of a Court not expressly declared to be so, it will be deemed to be a Court of Record, if it is empowered by Statutes or otherwise to fine or imprison for contempt of itself.³

Generally speaking, there must be, in every Court, at least three constituent parts: the *actor* (or plaintiff, who complains of an injury done), the *reus* (or defendant, who is called upon to answer the action), and the *judex* (or judge to examine and ascertain the truth and facts).⁴

In general, all matters, both Civil and Criminal, must be heard in open Court; but, in certain exceptional cases, the Court may sit *in camera*, either throughout the whole or part of the hearing, as for instance—

- (a) where it is necessary for the public safety, or
- (b) where the subject-matter of dispute would otherwise be destroyed, for example, by the disclosure of a secret process or of a secret document, or

¹ Arts. 215, 129.

² *Odgers* : Common Law of England, X Ed. (1911), Vol. II, p. 1,020.

³ *Halsbury's Laws of England* : Simond's III-Ed., Vol. 9, p. 347.

⁴ *Blackstone's Commentaries*, III, p. 26.

(c) where the Court is of opinion that witnesses are hindered in, or prevented from, giving evidence by the presence of the public,¹ or

(d) where Courts are enjoined by Statute to exclude the public in particular proceedings, such as in matrimonial matters, or

(e) where the presence of the public would make the administration of justice impracticable, e.g., where a child is testifying as 'to indecent offences', and in guardianship and lunacy proceedings where the judges are supposed to act not strictly as Courts but as representing the Sovereign as *parens patriae*.²

All tribunals are not Courts, though all Courts are tribunals. By 'Courts' is meant Courts of judicature and by 'Tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. The word 'Courts' is used to designate those tribunals which are set up in an organized State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish wrongs.³ There are tribunals with many of the trappings of a Court, which, nevertheless, are not Courts in the strict sense of exercising judicial power.⁴ A Judicial Officer, for instance, of a Court, acting as an Arbitrator appointed by the State Government under a Special or Local law, though he has some of the trappings of the Court, is really not a 'Court' in the true sense of the word, inasmuch as, under that law, he is not constituted

¹ *Halsbury's Laws of England*, Simond's III-ed., Vol. 9, pp. 344-45.

² *Scott v. Scott*, (1913) A. C. 417.

³ A.I.R. 1961 S.C. 1669 (1960), Hidayatullah, J.

⁴ 1931 A.C. 275 (296).

a permanent tribunal for the administration of justice and his pronouncement is not of a decisive and binding nature.¹ According to Lord Stamp, the real distinction between the Courts and the tribunals is that the former have 'an air of detachment'.²

The power and authority to reach a conclusion, the necessity of the application of a judicial, that is an impartial, mind to the process of reaching a conclusion is a necessary adjunct even of executive and administrative functions. In fact, in all the departments of human activity, the necessity of distinguishing between the relevant and the irrelevant is ever present. But, when the judicial process combines itself with the power to decide on individual and social rights and obligations, and that power is clothed with the special status of being the Sovereign's representative for the dispensation of justice, a 'Court' is born and established.

Of late, a large number of administrative and domestic tribunals have sprung up all over the world. They too decide disputes between the parties but they cannot be termed as Courts; though many of them may be called quasi-judicial tribunals since they decide the controversies after hearing the parties and their evidence.

In countries, where administrative law is recognized as a separate branch, distinct from and independent of the ordinary law of the land, there is a dual system of courts for the administration of justice. Administrative Law in France (*droit administratif*) is that portion of French law, whether enacted and codified or built up upon court decisions, which, according to Dicey, determines (a) the position and liabilities of all State officials, (b) the civil rights and

¹ 1966 A.L.J. 460 (470), per Gyanendra Kumar, J. (All. H. C.).

² A.I.R. 1961 S.C. 1669 (1680).

liabilities of private individuals in their dealings with the officials as representatives of the State, and (c) the procedure by which these rights and liabilities are enforced. Many of the countries of the world, it is true, have got their own system of administrative law; but, unlike France, Italy and Germany, the English-speaking countries, e.g. Great Britain, Canada, the United States, and even India, where judiciary is patterned upon the English judicial system, neither treat the administrative law as a separate body of law nor have a separate system of administrative Courts, to which alone, as in France and Italy, the public officials may be subjected for the exercise of arbitrary governmental action or for their abuses and illegal administrative conduct. In France, such cases are handled only by special tribunals, known as *tribunaux administratifs* (Administrative Courts), with the *Conseil d'Etat* (Council of State) at their head, and not by *tribunaux judiciaires* (Ordinary Courts) under the *Cour de Cassation* (Court of Cassation), which is the highest court of appeal in France for ordinary cases, civil and criminal. The Administrative Courts in that country belong to a quite different hierarchy of tribunals and are independent of and in no way inferior to the ordinary courts, even the *Cour de Cassation* having no power to review or revise the decisions of the *Conseil d'Etat*. The administrative law in West Germany is known as *Verwaltungsrecht*; and the powers and procedure of Administrative Courts in that country under the Federal Administrative Court (*Bundesverwaltungsgericht*) are regulated by the Administrative Courts Act, 1960; and such Courts are in no way subordinate to *Bundesgerichtshof*, the Supreme Federal Court of West Germany. The Administrative Courts, in East Germany,

¹ DICEY: Law of the Constitution, 1962-ed., p. 333.

have now been set up under Art. 138 of the new Constitution of 1949.

There is yet *another system* of Courts, which is to be found, as for instance, in the federal Republic of the United States, as also in Australia and West Germany, whose Constitutions are modelled partly upon that of the United States. In these countries, the duality of judicial system consists in the existence of one set of Federal Courts and the other of the State Courts. Federal Courts are created by the Constitution or, under its authority, by an Act of federal or central legislature, and deal exclusively with the federal laws, civil and criminal. In the United States, the District Courts (the lowest rung in the federal judicial ladder), the Courts of Appeal and the National Supreme Court form the ascending hierarchy of Constitutional Courts in the federal judicial system; and Justices of the Peace or Magistrate's Courts, Courts of General Trial jurisdiction, Intermediate Appellate Courts and the State Supreme Court constitute another set of courts, called the State Courts. Established in each of the United States by the legislative measures of the State concerned, the State Courts deal exclusively with State laws, and are, in no way, subordinate to the federal judiciary. The competence of these courts does not extend to any of the federal laws, in the same way as the federal courts, except the national Supreme Court, cannot touch a State law. India, England, Canada, and even the U. S. S. R., China and Japan, have only one judicial system with nothing like Administrative Courts and Ordinary Courts or Federal Courts and State Courts. All persons—private citizens or public officials—are equally amenable to the same laws and to the same courts in these countries.

Also, the courts in every country do not wield the power of *judicial review*. In England, for instance, no tribunals, from County Courts

to the House of Lords, exercise this power. One reason for this is that there being no written Constitution (of the type India or the United States has), and any other legislative organ, in England, the laws of Parliament are supreme and no question of unconstitutionality or repugnancy ever arises. The English Parliament, in the oft-quoted words of De Lolme, an early Parliamentarian, can do anything except make a man into a woman and a woman into a man. An English judge, therefore, about a century ago, categorically denying the power of judicial review, asked : 'Are we to act as regents over what is done by Parliament with the consent of Queen, Lords and Commons . . . ?'

The French Courts also, including the *Cour de Cassation*, do not possess the competence of judicial review ; and the Courts in Italy, including the *Corte Supreme di Cassazione*, modelled upon the judicial system of France, also do not possess this power. The new 1947-Constitution of Italy has, however, conferred this authority on the *Corte Costituzionale* (the Constitutional Court), as the new 1946-Constitution of Japan, by its Article 81, vests that power in the Supreme Court of that island, though that Court also had no such power prior to the new Constitution, as the civil law and the judiciary in Japan were patterned upon the legal system of France. The new pattern was imported to Japan from the United States, which had the main hand in giving the new Constitution to that country after her defeat at the Second World War in 1945. Likewise, in West Germany, the power of judicial review is not possessed by any of the Courts, except the Federal Constitutional Court, as reconstituted in September, 1951, under the Basic Law (Bonn Constitution) of 1949, Art. 94(2), and the law of March 12, 1951. In Soviet Russia and China, no courts whatever wield the power of judicial review ; and the U. S. S. R. Supreme Court has,

instead, been given the right to initiate legislation by the Statute of the U. S. S. R. Supreme Court, dated February 12, 1957, s. 1(3).

The United States, since the nineteenth century, and India, since at least 1950, have been champions in the field of judicial review. The nature of the Constitutions of the two great countries, the clear division and definition of legislative powers conferred upon the Central and State legislatures, with an inviolable line of demarcation drawn in between their functions, necessitated the task of judicial review. This power, though it is not conferred, in express terms, by the Constitution of either of the countries, is exercised by the State Supreme Courts in relation to State laws and the National Supreme Court, to all laws, in the United States, and by the High Courts, and the Supreme Court of India in relation to all laws. 'This Constitution', ordains Art. VI, s.2, of the U. S. Constitution, 'and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding'. The primary duty of a Court to interpret the law, therefore, necessarily involves the power to determine whether an Act of Legislature conforms to the Constitution. Thus, the power of the Courts to rule on the constitutionality of laws and to invalidate the legislation violating the spirit of the Constitution, which is supreme, is of the very essence of the judicial function in both the countries.

In some of the countries, courts are *elective* and in others, *appointive*. In Soviet Russia, the judges and the people's assessors of all courts are chosen for fixed terms by direct popular election in the manner prescribed by the U. S. S. R. Constitution

of 1936.¹ No educational or other qualifications are required; and any citizen (including a woman) of the Union, who has reached the age of 25 and has not only the formal but also moral right to administer justice, may be elected a judge or assessor. The judges report their activities periodically to their electorate in factories, offices, Kolkhoses and farms, are accountable only to their electors for their work and that of their Courts, and can be 'recalled' by them prior to the expiry of their term of office for their improper behaviour, laches or misconduct.²

The judges of the Supreme Court of Japan are appointive; but their retention in office, after their appointment' is 'reviewed' by the voters at the first general election of the House of Representatives (lower house of the Japanese Parliament, DIET) following their appointment; and the judges are dismissed in case the majority of voters favours the dismissal.³

In East Germany also, the Attorney-General and the judges of the Supreme Court and some of the superior Courts are chosen by election, and can be recalled by their electors, in the manner prescribed by the Constitution of 1949.⁴

The judges of the State courts in most of the United States are elected for fixed terms; while those of the Constitutional Courts of the federal judiciary are appointed by the President with the advice and consent of the Senate,⁵ and hold office 'during good behaviour'. No qualification is prescribed either by the Constitu-

¹ U. S. S. R. Const., Arts. 105—109.

² Fundamentals of Legislation on Judicial System, Dec. 25, 1958, Arts. 33, 34, 35.

³ Jap. Const., Art. 79.

⁴ GDR Const. of 1949, Arts. 130, 131, 132.

⁵ U. S. Const., Art. II, s. 2(2).

⁶ *Ibid.*, Art. III, s. 1.

tion or Act of Congress for appointment as judges ; but, generally, men of legal experience and members of the Bar, belonging to the political party of the President, are appointed. Out of the new 62 federal District Judges, appointed during the first ten months of President Kennedy's regime, three were Republicans and all the rest came from the Democratic party. There is no system of recruitment by competitive examinations or appointment by promotion, even in case of the judges of the national Supreme Court.

In France and Italy, on the other hand, all the judicial appointments to the courts of first instance are made by recruitment by means of competitive examinations and to the higher courts, by promotion. In France, one may become judge soon after obtaining law diploma from the University, provided he is selected by means of prescribed examination. 'The result,' as remarked by David and Vries,¹ 'is that the Bench and the Bar are separated by a formidable barrier of differences in temperament, training and approach. The French judge feels a far closer kinship with the professor of law than with the *avocat* (advocate), whom he tends to regard as a mere rhetorician'.

In England, the judges of the County Courts are appointed from among the Barristers of at least seven years' standing and hold office up to the age of 72 ; while the Barristers of at least ten years' standing are appointed judges of the High Court of Justice, who hold office 'during good behaviour'.² Recently, however, an age-limit has been fixed at 75. The judges of the Court of Appeal and the

¹ The French Legal System, 1958-ed., p. 18.

² An exception to this general rule is made in the case of Lord Chancellor, who is appointed for five years with every new ministry and goes out of office with the ministry.

House of Lords are, however, appointed by promotion from the High Court of Justice and the Court of Appeal, respectively.

In India, the judicial officers of the Courts of first instance are selected by competitive examinations, while those of superior courts, mostly by promotion. Judicial appointments to the High Courts and the Supreme Court are made partly by promotion and partly by direct appointments.

The *emolument* for performing the judicial functions of the Courts also varies from country to country. The judges of the United States are probably the highest paid judicial officers in the world. The annual salary of the Chief Justice of the U. S. Supreme Court is 40,000 dollars, and that of the Associate Justices, 39,500 dollars, each. The Judges of the federal Courts of Appeal receive 33,000 dollars a year, each, while those of the federal District Courts, 30,000 dollars, each. The annual salary of the Judges of the State Supreme Courts (which correspond to the Indian High Courts) varies from 14,000 dollars in North Dakota to 39,500 dollars in the State of New York, which pays its Chief Justice 42,000 dollars a year, and 37,000 dollars a year to each of the Judges of the Courts of General Trial jurisdiction (district or county courts).

The annual salary of the County Court judges in England is £2,800, each, and that of the Judges of the High Court of Justice is £10,000, each; while the Judges of the higher courts receive £12,000 a year, each.

Canada pays its Chief Justice 35,000 dollars a year; while each of the other Judges of the Canadian Supreme Court gets 30,000 dollars a year. The Chief Justice of a provincial Supreme Court in Canada is paid 25,000 dollars a year, while other Judges of that Court receive 21,000 dollars a year, each. The President and each of the other Judges of the Exchequer Court also receive the same

amount, viz., 25,000 dollars and 21,000 dollars a year, respectively. The entire emolument received by a District or County Court Judge in Canada ranges between 18,000 dollars and 23,000 dollars a year and varies from province to province ; while the salary of Magistrates, which also varies from province to province, ranges between 6,500 dollars and 12,600 dollars a year.

The Judges of the Continental courts, including those in France, are, however, not so highly paid as their counterparts in English-speaking countries ; even though, as in India, so in France, most of the Judges are men of brilliant career and extraordinary ability possessing high degree of legal talents. The Bench, both in France and India, is highly respected by the people and the Judges enjoy high dignity, prestige and social standing.



Memoirs and Reminiscences

My Reminiscences of the Allahabad High Court

By

SRI G. S. PATHAK

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I JOINED the High Court Bar in the year 1928, I shall endeavour to give the picture of the High Court as I saw it in those days. Tradition had it that in the history of the High Court there were always two outstanding personalities at the Bar who generally appeared on opposite sides in important cases. They were of equal rank and dominated the scene as friendly rivals. Motilal Nehru and Sunder Lal were bracketed together. Later came Tej Bahadur Sapru and Satish Chandra. Dr. Sen took the place of Satish Chandra after his death. Pyare Lal Banerji and Dr. Katju followed. In 1928 and the years following, there was a phalanx of seniors and the juniors had little chance of rising fast to reach the higher ranks. Apart from the names already mentioned, there were Uma Shanker Bajpai, Iqbal Ahmad and Sham Kishan Dar in addition to a few others. They practically monopolised the senior briefs.

Sir Sunder Lal had passed away before 1928. Motilal Nehru had given up regular practice. He, however, appeared occasionally in celebrated cases. He appeared in the Bail Applications in the Meerut Conspiracy case. The Court room was packed to the full. A number of counsel appeared on behalf of the accused. Among them, Motilal Nehru was the last to speak and his 45 minutes' address was most refreshing and created the greatest impression. He was opposed by Langford James, the leader of the Calcutta Bar. In reply Langford James started with the sentences : "My Lord, had I not felt". He intended to say that he would not have opposed the bail application had he not felt that there was no substance in it. But before the sentence was complete Motilal Nehru interjected, 'I want a ruling from the Court. Is it a place for expressing one's feelings or making submissions.' The ruling came from the Bench which was presided over by Sir Grimwood Mears, 'You are right Pandit, this is a place for making submissions.' Langford James did not expect this interruption and the flow of his subsequent arguments was upset. I also watched Motilal Nehru arguing a company matter before Mr. Justice Ashworth. He was building up a case of fraud on the basis of circumstantial evidence. Small bits of evidence were skilfully pieced together and ultimately the full picture of fraud was before the court.

Since those days, the system of working and the terms on which the seniors and juniors worked have completely changed. I believe that juniors in those days were more fortunate in one respect. The system of transferring briefs by seniors, whose hands were full with big cases, to juniors was very common. A promising junior was given a fair chance. If his work gave satisfaction, he was very much in demand. He would be complimented on his arguments in court both by his senior colleagues and sometimes by the Judges.

Briefs from seniors came in quick succession and most seniors paid for the work taken from the juniors. Some Judges were particularly good to juniors. They even mentioned in the judgments the names of the juniors who argued cases before them with words of commendation : 'Mr. 'X' argued the case with great skill and ability', 'Mr. 'Y' argued the case with great enthusiasm' and so on. When these judgments were reported, the juniors attracted attention and became known to the mofussil lawyers and the litigant public. At the time of admission of cases a junior sometimes had a better chance than his senior. Mr. Justice Niamatullah was one of those Judges, who never allowed a junior, when pitted against a senior in his court, to feel that the latter had an advantage over him. That learned Judge used to say that if a Judge were not to concentrate on what is said but paid undue attention to who said it, he gave evidence of his own incompetence. I was once arguing an admission case before him and Mr. Justice Pollock. Mr. Justice Niamatullah was the junior judge. After hearing me for a few minutes, Mr. Justice Pollock remarked : 'I do not wish to hear you any more. There is nothing in your case.' Mr. Justice Niamatullah at once said : 'Mr. Pathak, you go on. I shall hear you.' Thereupon I was allowed to argue my case fully.

Sir Shah Mohammad Sulaiman was a talking Judge. Once Sir Tej was arguing a case before him and was not free when wanted in the Chief Justice's Court before a Bench consisting of Sir Grimwood Mears, C. J. and Mr. Justice Sen. Sir Grimwood Mears asked Sir Charles Alston, who happened to be present in his court, "Do you know where Sir Tej is?" Out came the reply, "My Lord, he is listening to Sir Shah Sulaiman in the adjoining Court-room." Comparisons are odious. But it must be said that there was no senior more kind, more generous and more solicitous of the welfare of juniors than Sir Tej.

Coming to more recent times. It was commonly said about Pyarelal Banerji that few, if any at all, had spoken such good English in the Allahabad High Court as he did. He was master of chaste legal diction. When he was arguing it was difficult to say whether he was reading from a House of Lords' decision or he was making his own argument. Happily Dr. Katju is with us. I must refer to at least one incident about him. When his case was called on and Dr. Katju stood up to open it, the Chief Justice asked, "What is all this we are reading in the newspapers about the Chamber of Princes?" Dr. Katju snapped, "I see, your Lordship is reading newspapers these days." There was a ripple of laughter in court and without any further delay the case started.





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Some Judges and Lawyers Whom I Knew

By

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I STARTED my career of legal profession in Kanpur in the year 1908 and shifted to the High Court Bar at Allahabad in March 1914. At that time there were 7 Judges in the Allahabad High Court, the Chief Justice being Sir Henry Richards. Among them, two were very senior learned Judges—Sir George Knox, I.C.S. and Sir Parmoda Charan Bannerji, P.C.S. They had been appointed in 1890 and 1892 respectively. They were then two of the oldest Judges in the High Courts of India. After their appointment the 60 years Rule had come into force and they were exempted from its operation. The rule is said to have originated from a protest made and a movement started by members of the Indian Civil Service. Till then there was no age-limit applicable to the Judges of the High Courts in India. Speaking generally, one-third of the High Court Judges including the Chief Justice were required to be Barristers-at-law called to the Bar by Inns of Court in England and one-third were required to be members of the Indian Civil Service

but there was no restriction of any kind regarding the remaining one-third. They were generally chosen from members of the Provincial Judicial Service or from the members of the Vakil High Court Bar in India. Under the I. C. S. Rules, then in force, a member of the Civil Service might be called upon to retire after 35 years service. That meant that his retirement came any time when he was over 56 years of age but if any member of the Indian Civil Service (Judicial Branch) was elevated to the High Court Bench then he could continue as a Judge of the High Court as long as he pleased. His continuance as a Judge of the High Court for any great length of time blocked the promotion of his colleagues in the Judicial Service junior to him to the High Court Bench. They could not stay on till his retirement but had to vacate and retire under the 35 years Rule. It is said that the members of the Indian Civil Service drew attention to this, what they called, unfair and unjust, feature of the current practice so far as the I. C. S. was concerned and they insisted and prayed that Judges of the High Court drawn from the I. C. S. should be compelled to retire in accordance with the I. C. S. Rules, so that their juniors in the service may have a fair chance of promotion to the High Court Bench. This representation was considered forceful but the higher authorities considered it improper to make a distinction between the High Court Judges *inter se* in the matter of retirement. So it was thought fair and prudent to impose an age-limit of 60 on all the High Court Judges of India without any distinction between them. This rule came into operation some time in 1895 or so but as I have already said above Sir George Knox and Sir Pramoda Charan Bannerji having been appointed as Judges much earlier were exempted from the Rule. They continued to function as Judges for many years till they were over 82 or so.

Sir George Knox was the Administration Judge also in the Allahabad High Court and continued as the Administration Judge for very many years. He generally used to sit alone all by himself and was considered to be an ordinary but slow Judge not very alert and given almost to an occasional napping on the Bench. He was a kind-hearted Judge and was indeed kind towards all juniors who appeared before him. In my younger days I used to appear before him occasionally. One scene I always remember, it was so amusing. I was arguing a criminal revision before him. The accused-applicant had been convicted of house-breaking at night. The master of the house had left his home to catch a night train at a railway station some miles away from the village. Unfortunately, he missed the train and had to return home at about 2 o'clock at night. He found the door open and the accused inside the home. He caught hold of him and took him to the police station on a charge of house-breaking at night. The defence of the accused was that there was no question of any house-breaking at all. One of the female residents of the house who knew him well had called him and he had gone there on her invitation. This explanation was not believed by the lower courts and he was convicted. In my youthful enthusiasm I dwelt upon it with great warmth and pleaded strenuously in the alternative for the reduction of the sentence. I urged that there was no intention on his part to commit any criminal offence. The accused was only carrying on a love affair and so on. Sir George Knox appeared to me to be listening to me with great attention and I thought that I was making a great impression upon him and that added to the vehemence of my argument. Suddenly Sir George Knox burst forth with the remark, "I have been considering whether it is not a case for enhancement of the sentence. Just imagine a Gadaria breaking into the house of a Brahmin for nefarious activities

like this.” I was literally stunned and at once collapsed and sat down. The application was dismissed.

I remember another case in which my honoured friend Sri Shyam Kishan Dar was arguing a second appeal before Sir George Knox with great eloquence and persuasion. I was appearing for the respondent in that appeal. I was sitting close to Sri S. K. Dar. I do not know what happened to me. I suddenly rose and submitted “My Lord, my learned friend is indebted to his imagination for his facts and to his fancy for his arguments” and then deliberately I moved three chairs away from Sri S. K. Dar noticeably apprehending some aggressive movement from his side. Sir George was struck by the comedy of the scene, and he laughed outright. Sri Dar, of course, was furious.

Sir George had become accustomed to sitting singly and everybody thought that he used to take the discharge of his judicial duties on the Bench very lightly. When Sir Grimwood Mears came to Allahabad as a Chief Justice of the High Court we all thought he took notice of the current situation and began to sit with Sir George Knox on a Division Bench. Sir George now had to keep awake and apply his mind continuously to the case before him. He could not stand this mental pressure very long and I think in a few months he resigned.

Sir Pramoda Charan Bannerji was very wide awake and he was held in the highest respect as the most learned and experienced Judge of the High Court. One scene I shall always remember. He was sitting with Sir Henry Richards on a Division Bench and hearing a criminal appeal. It soon became apparent that the two learned Judges were taking different views in the case before them. The difference gradually became so acute that they practically ceased to be on speaking terms with each other and they began talking to each other

through the counsel before them. One of them would put a question to the counsel and the other Judge would intervene by saying "I suppose your answer would be this." The arguments were concluded and the Chief Justice being the senior Judge dictated his judgment. He dictated it on his own behalf and gave expression to his own views and findings and concluded by saying that "I would, therefore, allow the appeal" and so on. He was then followed by Sir Pramoda Charan Bannerji who in his judgment again in the first person singular dealt with the arguments advanced by the Chief Justice and countered them by his own views. We all thought that the two Judges were differing completely from each other and the case would have to go before a third Judge for final decision. We were also noticing that Sir Henry Richards had become absolutely quiet and was listening to Sir Pramoda Charan Bannerji with his eyes closed. Suddenly, everybody was immensely taken aback when Sir Pramoda Charan Bannerji began saying "but inasmuch as the learned Chief Justice had taken a contrary view I am not prepared to differ and I would also, therefore, allow the appeal" and so on. The whole Court was filled with excitement. Sir Henry Richards woke up. His face was glowing and jubilant and he rose in his seat and turning towards Sir Pramoda Charan Bannerji solemnly bowed to him, his face wreathed in smiles. The Court atmosphere was suddenly changed. It was indeed an extraordinary glorious scene. This is a story I think of 1915 or 1916.

I had myself a rather curious incident with Sir Pramoda Charan Bannerji. He was sitting with Chief Justice Sir Grimwood Mears and I was appearing for the appellant in an appeal before him. It was rather a difficult case. Some property was in dispute and many creditors-decree-holders of a particular judgment-debtor were trying to get hold of that property on the allegation that it

belonged to their judgment-debtor and was, therefore, liable to attachment and sale in execution of their decree. Their claim was resisted by another individual who claimed to be the owner of the property in his own right wholly unconnected with the judgment-debtor. This question of ownership had previously been raised in a claim launched by a particular judgment-creditor but that suit had been dismissed by a Division Bench of the High Court of which Sir Pramoda Charan Bannerji was also a member. The question was raised again in another suit subsequently instituted by another judgment-creditor. Parties being different no question of *res judicata* could be raised but naturally the lower courts had felt themselves almost bound by the previous High Court judgment and they had dismissed the suit. It was an appeal in that case which I was then arguing before this Division Bench consisting of Sir Grimwood Mears and Sir Pramoda Charan Bannerji. I opened the case and briefly stated the points in my favour. Both the Judges were greatly impressed and clearly expressed their views in my favour. Sir Pramoda Charan Bannerji then in tones of surprise and curiosity asked as to why the lower courts had decided the case against me. It seemed to him almost incomprehensible. I quietly said, "My Lord, the learned District Judge has been somewhat impressed by a High Court judgment." Sir Pramoda Charan Bannerji asked, "Who were the Judges in that judgment?" and I quietly said, "Your Lordship was one but the judgment was not delivered by your Lordship. The then Chief Justice had delivered the judgment." Thereupon, my learned friend appearing for the opposite side enquired, "How does my friend know that?" and I answered, "His Lordship (Justice Bannerji) is always in the habit of using the phrase 'as pointed out above' in his judgments but that phrase does not occur in the judgment now under discussion."

Everybody, of course, smiled at this inference of mine. Sir Pramoda Charan Bannerji then asked for the ruling and after some time began to read it. He had committed himself so deeply with his remarks in my favour during the course of argument that he was obviously embarrassed by the previous judgment. Sir Grimwood Mears was in my favour but he was thoroughly enjoying and relishing the scene. Soon I noticed he directed the Court Reader to send for some papers. The papers came and he looked at them and then suddenly he burst forth, "I now realize what has led to all this mistake. Here is my brother's note book of the time when this earlier case was heard. There are just four lines of notes recorded by Justice Bannerji about this case. It is obvious that the case was never fully argued before the Bench at that time. Facts were not properly stated nor full circumstances brought out and that led to the delivery of a wrong judgment in that case. How can we be bound by a decision like that?" Sir Pramoda Charan Bannerji was obviously relieved and pleased. The argument continued and ultimately the appeal was allowed.

In my practice in the High Court from 1914 to 1937 I had the privilege and good fortune of appearing before many Judges in the High Court. They were all able, competent, learned and extremely anxious to administer complete impartial justice between the parties. Among them all Sir Henry Richards, the Chief Justice, who retired in 1917, was undoubtedly an outstanding personality. He was extremely quick-witted, intelligent and of a forceful penetrating intellect. He would soon come to the point and would love to dispose of the case as quickly as possible. He was a dominant personality anxious always to encourage deserving young men appearing before him but he would tolerate no misbehaviour of any kind. One incident stands out in my recollection. He was

sitting singly and hearing second appeals for admission under order 41, rule 11, C. P. C. In one appeal one of the pleas in the memorandum of appeal was that a particular finding of the learned District Judge was not supported by any evidence on the record. Sir Henry Richards read the judgment and said, "In the judgment it was stated that that particular finding was based upon the evidence of a particular witness."

Counsel—"That is not so. The witness had said nothing on the point."

C. J.—"Have you read the statement?"

Counsel—"Yes, My Lord."

C. J.—"Have you got a copy of it? Please read it."

Counsel began to fumble with the deposition of the witness.

C. J.—"Pass it on to me."

Counsel passed the statement on to the Bench. The Chief Justice read it. Unfortunately, it appeared that there was a line in that statement dealing with the matter before the District Judge. The Chief Justice became furious. I shall never forget the sight of his face which was red with anger and he burst forthwith, "Appeal dismissed with costs," and added, "I shall never believe in future a word of what you say". It was such a passionate denunciation and the remark was uttered with such vehemence that Counsel probably thought his continuance in Allahabad was now an absolutely hopeless proposition and he left Allahabad for good within a week and shifted himself to the Lahore High Court.

I attracted the notice of Sir Henry Richards very early in a rather curious fashion. I was engaged as a junior in a particular appeal for the appellant. There were several senior Advocates like

Dr. Sapru, Sir Sunder Lal and Mr. O'Connor already appearing in the case. When the case was called on before the Chief Justice unfortunately all the senior counsel were engaged in other Courts and in as much as my instructions were definite that I was to assist my seniors but not to argue the case myself, I stood up and prayed for an adjournment. The Chief Justice looked at the youthful pleader before him and granted my prayer but with a smiling countenance he looked at me and said, "What are you here for? Why don't you argue the case? Are you here for ornament's sake?" I was greatly touched and told him that I was only too ready to argue the case myself but my instructions were precisely to the contrary. I, thereafter, made it a rule of my life never to make a motion for adjournment of any case on the ground of the engagement of my seniors elsewhere.

Service Judges were usually drawn from the Indian Civil Service (Judicial Branch) and as in those days 50 years ago the Indian Civil Service was mostly manned by British people, our Service Judges were mostly all British people.

In the first ten years of my practice in the Allahabad High Court, we had several Service Judges of learning and judicial experience. Some of them I remember vividly—Sir William Tudball, Sir Edward Maynard Des Chamier, Theodore Caro Piggott, Benjamin Lindsay, Sir Louis Stuart, James Allsop and Sir Edward Bennet. Each one was anxious to do justice between the parties but as was to be expected from people who had devoted the whole of their lives to a judicial career, right from the start, all of them had personalities and characteristics of their own and the access to their hearts, minds and brains was to be found in different ways. For instance, Mr. Justice Lindsay was a most careful, painstaking Judge. He was anxious to become acquainted with all the papers on the

record and with all the facts and circumstances of the case in detail. He did not like to look into papers at home and endeavoured to master the case before him by studying in Court. He liked the pleadings, the evidence and the judgment to be laid before him in full so that nothing important might escape his notice. All this meant and involved a slow process but it appealed to many members of the Bar and a hearing before him was greatly longed for, welcomed and appreciated. Mr. Justice Louis Stuart was a perfect opposite of Mr. Justice Lindsay. He endeavoured and generally was able to read the important papers of the case at home and at the hearing in Court he was brisk and keen to come to the point in a few minutes and to dispose of the case as quickly as possible. In view of these differing temperaments, methods of approach before the two Judges were almost diametrically opposed to each other and it was desirable for every advocate to adjust himself to the mental processes of the two learned Judges.

Once I had a very curious, rather amusing, experience before these two learned Judges. They were sitting jointly together on a Division Bench and I had to argue a second appeal before them for the appellant in the case. I opened the case and after shortly stating the facts began reading the plaint. As I was doing so Mr. Justice Stuart, who was fully aware of the facts of the case, suddenly put a question to me on the merits. I dropped the plaint and applying myself to Justice Stuart's question began answering it. I noticed that Justice Lindsay was considerably irritated and he was much annoyed at the interruption caused by Justice Stuart's question. In a few minutes after completing my answer to Justice Stuart's question I came back to the plaint and resumed its reading. I had not proceeded very far when Justice Stuart broke in again with another question and again I had to veer round and apply myself to

answering that question. I noticed that Justice Lindsay's irritation became still more pronounced and he began scratching his hair with his fingers. Again after finishing my answer to Justice Stuart I came back to the point once again. Shortly, afterwards, came another interruption. This time Justice Lindsay could not control himself and, believe it or not, he stretched his left hand (Justice Stuart was sitting on his left) and placing it almost within an inch in front of Justice Stuart's mouth tried to choke Justice Stuart off and turning to me observed, "You better continue your argument." The scene was an extraordinarily facetious one. Every body in court laughed including the two Judges but Justice Lindsay gained his object and Justice Stuart kept quiet all through the hearing and never interrupted again to oppose any other question.

Justice Stuart's manner was held by many advocates, seniors and juniors alike, to be much too abrupt and indicative of impatience. The Judge was obviously anxious to shorten the hearing of the case as much as possible and to dispose of it in a few minutes.

Sir Edward Bennet was equally impatient and equally non-appreciative of long arguments. He wanted to study the case all by himself and so just as the case was briefly opened before him he would invariably start with a series of questions, "How many witnesses were there, Dr. Katju?" I would give the number and the names. "Where is the evidence of so and so?" I would give the page. He would read for himself and then ask about the next witness. The process went on till he concluded his reading of the evidence and the relevant papers all by himself and then asked me for the main points of my arguments. I would put them before him and try to meet the opposite side's version of the case and then after a short argument from my learned friend on the other side the hearing of the case would come to an end.

I need not say that much depends in Court on the temperament of the Advocate also. If he is a laborious, long-winded gentleman, anxious to go into details of the case, he finds the atmosphere before Judges like Justices Stuart and Bennet rather uncongenial, but advocates who are themselves not given to elaborate preparations of their briefs and are anxious to put their cases as shortly and precisely as possible, get along exceedingly well with Judges like Stuart and Bennet. Speaking for myself I had that good fortune because in the course of time I had myself developed the habit of concluding my arguments as quickly as possible and only emphasizing the real points in the case. One experience of mine was very curious and amusing. In a second appeal I was appearing for the respondent opposing my dear friend Pearey Lal Bannerji, who was appearing for the appellant. The case came on the daily list before Justice Stuart one morning and it so happened that owing to pressure of other work—both in Court on the day's list and outside—I could not look into this particular second appeal of mine. What to say of study, I had not even opened the brief and did not know at all what the case was about and what exactly was the point of law raised therein. That morning on reaching the High Court while I was mounting the stairs I came across my friend P. L. B. and I told him that I had had no time to look into this case and asked him whether there was anything in it. He smiled broadly and waved his hand indicating that there was not much in the appeal. I took the hint and ceased to worry about the case. As the different Courts commenced to work, I began to walk up and down the corridor looking after one or two cases of mine which were proceeding in these Courts. In about half an hour came my client, the respondent in the second appeal, running to me and requested me to proceed to Justice Stuart's Court at once because he said, "The case has been called and Pearey

Babu has started his arguments. So, do please come.” I told him “not to be impatient. I will come a little later,” but he was not to be pacified and he said, “Dr. Sahab, Dr. Sahab, do please come straight off, just show your face and come away if you like.” I was rather amused by the way in which he was phrasing his request and I just followed him. When we reached Justice Stuart’s court-room, I lifted the curtain and put one foot inside the room and I noticed that P. L. B. was going on with his arguments. Stuart, J. looked at me from the Bench and very likely imagining that I had come into his Court for this particular case from some other Court leaving my case there, he, believe it or not, just beckoned to me from the Bench to go away. I took the hint and left the Court. I think P. L. B. sat down afterwards in a few minutes.

That is the way in which Stuart, J. used to polish off many cases a day in his Court, day after day. This particular method deserves attention because we are all troubled these days with the heavy arrears in our Court.

There is one particular feature in the law practice in the High Court. High Court Judges remain on the Bench for long periods, at least for ten years and more, and almost a family atmosphere prevails between the Bench and the Bar in the High Court. The Judges and practising lawyers come to know each other very well and cases are argued in an atmosphere of understanding and cordiality and almost light-heartedness and the process of argument before them often becomes a very simple and untiring affair. I sometimes used to make light-hearted, you may say almost impertinent, remarks, but the Judges were kind and they enjoyed the fun themselves.

After a long experience I have come to the conclusion that the best process of conducting an argument and avoiding scenes

in Court was to give a ready and precise answer to every question of the Judge. Give your answer first and then add anything afterwards. I remember vividly a scene in the Court of Mr. Justice Tudball. He was hearing a second appeal. Dr. Sapru was the senior counsel in the case. He was elsewhere. He had handed over the brief to me and asked me to sit in Court and listen to the arguments of his colleague. That argument was proceeding but my friend did not appear to be making much ado. He stressed some points on which the learned Judge asked a question. Answer to that question was not to the liking or in favour of my friend, the Advocate. So, instead of giving the answer first and trying to explain it away afterwards, he would just begin by saying "But My Lord". Tudball, J. repeated the question and then again it came, "But My Lord". This happened three or four times ; whereupon Tudball, J. lost his temper and shouted something very rude. I was myself, though young in age, rather distressed and hurt by his discourteous demeanour and my head began to wave almost involuntarily in indication of my disapproval of the Judge's behaviour. Tudball, J. noticed it and he suddenly turned round and in a loud voice asked me, "Do you understand him ?" And I answered, "Yes, my Lord." "What does he mean ?" "What he obviously means is that what your Lordship is saying is correct but he wants to give an explanation of the situation." "Why does he not say so ?" To which I said, "Ask him."

Justice Tudball was a Judge of great experience, great learning, great wisdom and he was held by the Bar in great respect and esteem. Once, however, he gave me a baffling example of imperfection of human justice.

Sitting with Mr. Justice Rafique, he was hearing a criminal appeal in which in a conviction for murder only a sentence for

life imprisonment had been awarded. Our senior-most counsel, the famous barrister, Mr. Alston, was arguing the case for the appellant. The Judges were not only not convinced by the argument, they formed a very strong opinion quite adverse to the appellant and thought he had been guilty of great moral misbehaviour in the course of the whole incident. They became furious in their denunciation of his conduct and they thought that the Sessions Judge had been unduly merciful to him and they took the view that in the interest of justice a death sentence should be imposed on the appellant for the offence of murder. So, a notice to show cause why sentence should not be enhanced was ordered to be issued. I was present in Court just as a spectator and was somewhat struck by the very severe attitude of the learned Judges, particularly of Mr. Justice Tudball.

After about three weeks when I was sitting again as a spectator in the court of Justice Chamier and Justice Piggot, I saw the Government Advocate, Mr. Malcomson, rising and saying, when the Reader called on a particular case, that, "My Lord, there has been some mistake about the listing of this case. It was heard the other day in full by another Bench, who ordered an enhancement notice to issue. This case should have been listed before that particular Bench for final decision." Chamier, J.: "Is it not the practice, Mr. Malcomson, that if one Bench issues notice, the case is listed before another Bench for final disposal?"

Mr. Malcomson : "No, My Lord, there is no such practice. These enhancement notices are always, as a rule, heard and disposed of by the Bench which issues them."

Chamier, J.: "I think there should be such a rule. Anyway, now that the case has come before us we will hear it and dispose it of."

The two learned Judges heard the appeal on the merits and within an hour allowed the appeal and acquitted the appellants. Thus, the issue of a notice of enhancement proved to be a great blessing in disguise to the accused persons.

I had once a similar experience myself. My client had been sentenced to three years' imprisonment. I thought I had, on the judgment of the Sessions Judge himself, a strong case, but Mr. Justice Uma Shanker Bajpai, before whom the case was posted for disposal, thought otherwise, took a very serious view of the matter and thought that not only my client was guilty but he deserved a much more severe punishment. So, in spite of my indirect hint that in the circumstances he might as well dismiss the appeal, he issued a notice for enhancement remarking, "Dr. Katju, blood is calling for vengeance." These enhancement notices in criminal cases are always heard by a Bench of two Judges. My case was posted before a Bench consisting of Sir Arthur Trevor Harries and Mr. Justice Rachpal Singh. In a short time they formed the opinion that the conviction was wrong and expressed a little surprise at the issue of the enhancement notice. After hearing the Government Advocate, the appeal was allowed and the accused was acquitted.

In view of such possibilities, I have always held the view that interests of justice demand that in the High Court every case, big or small, civil or criminal, should be heard and disposed of by a Bench of two or more Judges. Sometimes it becomes very difficult to bring round a single Judge to the correct point of view.

After 1914, in the next 30 years there were many Judges of great eminence. One who made a name for himself for his great legal talent and learning was Sir Shah Mohammad Sulaiman. He attained a fame for learning almost equal to that of Justice Mahmood.

Justice Sulaiman was appointed when he was only 33 years of age but his legal erudition was a great recommendation in his case. He and his brother Judge Justice Young created an all-India record by their quick disposal of the famous Meerut Conspiracy case. That case involved 18 accused—three Britishers and 15 other Indian politicians—members of the Communist party, accused of Criminal conspiracy for the overthrow of the Indian Government. The case had taken 15 months in commitment proceedings before a magistrate and took full two years of day-to-day hearing in the Sessions Court. The record in its bulk was simply awe-inspiring. The learned Sessions Judge took over six months in preparing his judgment which covered nearly 800 foolscap pages. The Government had engaged a special counsel, Mr. Kemp, a Barrister from Bombay, to conduct the case before the Sessions Judge. He appeared in the High Court too, and he thought that the hearing of the appeal in the High Court would take at least three months, if not more. I with several colleagues was appearing for the appellants. We concluded our arguments in five days. Mr. Kemp in reply took 2 days and on the 8th day Justice Sulaiman delivered his judgment in Court, which he dictated for about six hours and thus the hearing of the appeal was finished altogether in 8 days—a marvellous record.

Mr. Justice Sulaiman was afterwards appointed a Judge of the Federal Court at New Delhi. His premature early death deprived India of the services of a Judge of great erudition and merits. Four of the Judges of the Allahabad High Court went to other States as Chief Justices, Mr. Justice Chamier as Chief Justice of the Bihar High Court at Patna, Mr. Justice Young of the Punjab High Court at Lahore, and Mr. Justice Harries, who served as Chief Justice in three Courts, the last one being the Calcutta High Court. The fourth Mr. Justice Kailashnath Wanchoo functioned

later as Chief Justice of Rajasthan and is now a Judge of the Supreme Court of India.

The first Indian as the Chief Justice of the Allahabad High Court was Sir Shah Mohammad Sulaiman. After him came several others—Mr. Justice Iqbal Ahmad, Mr. Justice Kamala Kant Verma and Mr. Justice B. Malik.

The work has been increasing and so has the number of Judges. The art of advocacy requires great discrimination on the part of Advocates in the conduct of their arguments and that task becomes difficult, indeed, when you have to deal with a large number of Judges.

The Vakil's section of the Allahabad High Court Bar, right from the establishment of the High Court in 1866, occupied a most distinguished place in the Bar of India. At that time there were only four High Courts in India—Calcutta, Bombay, Madras and Allahabad. In the three High Courts in the Presidency towns, namely, Calcutta, Bombay and Madras, there were original sides attached to the High Court, with the result that the number of Judges on the Bench was fairly large. There was plenty of publicity in these three Presidency towns and their High Court Bars became famous throughout India for their legal talents and forensic skill. Allahabad was situated very much in the interior and there never was any original side, and the Press being a very small one there was not much publicity about judicial proceedings in the High Court. In spite of all these shortcomings, the Vakil Bar enjoyed an enviable reputation for its enormous learning and wonderful forensic ability. The Civil work was almost concentrated among the Vakils. There were one or two British barristers, who also used to handle Civil cases. Among the leaders of the Vakil Bar were Munshi Hanuman Prasad, Munshi Kali Prasad, Pandit Ajodhya

Nath and Pandit Bishambhar Nath, Pandit Sunder Lal and Moti Lal, Jogendra Nath Chaudhary and Durga Charan Banerji, Satish Chandra Banerji and Tej Bahadur Sapru, Pearey Lal Banerji and many others. One other rather curious feature of the Allahabad Vakil Bar was that the names of two Vakils began to be linked together in public discussions of those times and became almost household words in the legal world of Uttar Pradesh, Pandit Ajodhya Nath and Pandit Bishambhar Nath, Pandit Sunder Lal and Pandit Moti Lal, Dr. Satish Chandra Bannerji and Dr. Tej Bahadur Sapru. Youngest were Pearey Lal Bannerji and myself (Kailash Nath Katju). These couples seldom appeared with each other on the same side. They continuously opposed each other not only in the High Court but also in the district courts throughout Uttar Pradesh. Apart from their high standards of legal learning and advocacy, many of these eminent people were not only jurists but also leaders of public life in Allahabad as well as outside in the Province. Many enjoyed an all-India reputation. Pandit Sunder Lal was a great educationist. For years and years he worked in the Allahabad University and became its Vice-Chancellor. He had a great hand in the organization of the Benares Hindu University. No doubt the Benares Hindu University owes its foundation to the imagination, the drive, the energy, and the great personality of Pandit Madan Mohan Malviya. It was he who went about India and propagated widely and enthusiastically his scheme for establishing this University in Benares, and raised crores of rupees for the University, but its organization was entirely due to Pandit Sunder Lal. Pandit Sunder Lal's brother Pandit Baldeo Ram, who was also a lawyer, used to take great interest in education and has left behind him a great memorial in the shape of City Anglo-Vernacular College, Allahabad. Babu Durga Charan

Bannerji was the founder and the builder of the Anglo-Bengali College. To Pandit Madan Mohan Malviya, the Allahabad City and Uttar Pradesh owe a magnificent hostel in Allahabad just in front of the Muir Central College which, though originally named by Pandit Madan Mohan Malviya himself as MacDonnell Hindu Boarding House, is now known as Madan Mohan Malviya Hostel. I have the honour of being one of the first old members (Boys) of this hostel. It was built while I was residing in a bungalow in the hostel campus and when the new hostel became ready for occupation by the students, Pandit Malviya came one fine morning and asked the boys to shift into the new rooms and select one according to their own choice. We, 72 students, were thus the first residents of, call them now, 'old boys', of this hostel. The Allahabad High Court Vakils were the leaders in the political sphere also. They were mostly Congressmen. Pandit Ajodhya Nath was one of the founders of the Indian National Congress, and we have produced many Presidents of the Congress from the Allahabad Vakil Bar, men like Pandit Moti Lal and Pandit Madan Mohan Malviya. Jawaharlal Nehru started his career as a lawyer in Allahabad. He retired from the Bar in answer to the call of the Nation as sounded by Gandhi Ji somewhere about 1918.

Munshi Ishwar Saran was another eminent lawyer of Allahabad. He left us years ago but has left a permanent memorial, in Ishwar Saran Nagar, a great example of his devotion to the cause of Harijan brethren in Uttar Pradesh.

Mr. Jogendra Nath Chaudhary and Mr. Pearey Lal Bannerji had outwardly no interest other than their devotion to the law. Sri Jogendra Nath Chaudhary was one of the most eloquent and persuasive advocates that Allahabad has produced and Pearey Lal

Bannerji was famous for his masterly preparation and presentation of his cases before the Court.

As I have already observed, many of our Vakils were honoured by the High Court by the inclusion of their names in the roll of advocates.

As for the right of appearance in the High Court by members of the legal profession, only those who were called to the Bar in Great Britain by the Inns of Courts or who had passed the Vakils' examination held by the High Court or had obtained the degrees of Bachelor of Law were entitled to appear in the High Court. Two registers were maintained, one of Advocates and the other of Vakils. The Advocates were considered seniors. Barristers were enrolled in the Advocates' Register and also those Vakils on whom the status of an Advocate had been conferred by the High Court, and none others. I think amongst the Vakils who were elevated to the rank of an Advocate by the High Court, the most prominent were in the beginning Pandit Sunder Lal, Pandit Moti Lal, Jogendra Nath Chaudhary and one or two more. With the establishment of the High Court, many British Barristers came over to the N. W. P. (North-Western Provinces), as it was then called, for practice at the Bar. Apart from their legal talent and forensic ability, the fact that they were the members of the ruling community, lent them great position and prestige in the public eye. All important criminal cases are tried before Sessions Court and the Sessions Judges were, in those days, appointed from the members of the Indian Civil Service (Judicial Branch) and almost invariably used to be British people. The prevalent notion was that Indian Vakils and pleaders did not receive much respect from these British Sessions Judges and they were more courteous and more receptive to the arguments of British Barristers, who were members of their

own community. That was the feeling in the High Court also. Therefore, in the beginning all criminal practice was mostly confined to British Barristers in the High Court and in the trial courts in the districts. There were some barristers who, by their learning and ability had attained eminence even on the Civil side and they had a large practice but, speaking generally, Civil litigation was mostly concentrated in the hands of Indian lawyers. The Advocates Register continued in the High Court for many years and I think a Doctor of Law also became entitled to enrolment as an Advocate in his own right. Now the distinction between an Advocate and a Vakil does not exist. We had very many eminent British Barristers in the Allahabad High Court. Mr. Alston, the two Dillons, father and son, and Mr. Wallach were eminent on the criminal side. On the Civil side, we had Sir Walter Colvin and Mr. O'Connor. The arrival of British Barristers from England almost ceased in process of time. They were replaced by many Indians who qualified in law in London and were called to the Bar by the Inns of Courts there.



Reminiscences

By

DR. BIDHUBHUSHAN MALIK

Ex-Chief Justice, High Court, Allahabad

IT may not be out of place to mention one incident to show how the Vakils Association used to be a well-knit body under the leadership of Sir Tej Bahadur Sapru. In the year 1926, a Bench was constituted of Mr. Justice Dalal and Mr. Justice Pullan, both members of the Indian Civil Service. They were quick, intelligent and hardworking Judges. They would read the papers at home and confine the arguments to points mentioned by them so that counsel was not able either to build an argument or to properly place his case. This caused a great deal of dissatisfaction, and when a number of lawyers were lightly discussing in the Vakils Association the manner in which Order 41, Rule 11, C. P. C. cases had been disposed of that day by the Bench, Sir Tej Bahadur Sapru took a serious view of the remarks and considered that the confidence of the litigant public in the administration of Justice would be shaken and called a meeting of the Association. A resolution was passed that notice of the Hon'ble

Judges may be drawn to the apprehension prevailing in the minds of the members of the Bar and it may be pointed out to their Lordships that the appellant was entitled to a proper hearing. The resolution was sent to the two learned Judges under the signature of Pandit Shyam Kishan Dar, the Secretary of the Vakils Association. The Acting Chief Justice Sir Cecil Walsh sent for Mr. Dar and asked him to apologize, and, on Mr. Dar pointing out that he had merely signed the letter sending the resolution as the Secretary of the Association and he could not very well express his personal apology, the learned Acting Chief Justice issued a notice of contempt against him. On the issue of the notice every member of the Vakils Association headed by Sir Tej Bahadur Sapru signed an identical letter which was sent to the two learned Judges and a copy of it was sent to the Hon'ble the Acting Chief Justice. Thereupon notice was issued to all the members of the Association why they should not be dealt with for contempt of court. As every member of the Vakils Association was involved, the Barristers were called upon to defend them and Mr. B. E. O'Connor, Dr. M. N. Agarwala and myself were selected to represent the members of the Vakils Association. I still treasure the letter that I received from Sir Tej Bahadur Sapru, as a client, asking me for time when he could come to explain to me his case and enclosing a cheque for perusal fee and for appearance on the first day. After discussing the matter with Mr. O'Connor, instead of returning the cheque to Sir Tej, we decided to preserve it. The Bench constituted for hearing the case consisted of Sir Cecil Walsh, the Acting Chief Justice, and Sir Benjamin Lindsay, the Senior Puisne. Mr. Justice Lindsay, when he came to his Chambers and heard what the case was about, told the Acting Chief Justice that he refused to make himself ridiculous and would not like to be on that Bench. The other English Judges took a similar attitude and then Sir Shah

Mohammad Sulaiman was approached, who agreed to form a member of the Bench provided he was given 24 hours' time to mediate. His mediation resulted in the happy ending by mutual exchange of apologies and the matter was not heard of again.

Another interesting incident that will probably be not out of place to mention here arose in this way. Mr. A. P. Pandey filed an execution First Appeal.* The Bench hearing the appeal, consisting of Boys and Pullan, JJ., came to the conclusion that it was 'a reprehensible proceeding which amounted to an abuse of the process of the Court' and issued notice to Mr. Pandey 'to argue the general question whether in these circumstances Court' had 'power to order a legal practitioner' to pay the costs personally. The reasoning was that a Vakil here did the work both of a Solicitor and an Advocate, so he could be made personally liable. This discussion took place before lunch. During the Luncheon hour Sir Tej Bahadur Sapru heard about it and after lunch he went to Sir Grimwood Mears, Chief Justice—and we followed him there—and mentioned the incident and said that, as it was a very important matter from the point of view of the members of the Bar, he would like the case to be transferred to the court of the learned Chief Justice. As Sir Tej was very excited, Sir Grimwood Mears promised to have the matter considered by a Full Bench of all the lawyer-Judges from which the service Judges were all to be excluded. A Bench of seven Judges was constituted out of which three were English men and four were Indians. The Bench consisted of Sir Grimwood Mears, Sir Shah Mohd. Sulaiman, Boys, Lalit Mohan Banerji, Young, Surendra Nath Sen and Niamatullah, JJ. The Indian Judges held in

*Mahant Shantanand vs. Mahant Basudevanand (ILR 1930 All. 619 = AIR 1930 All. 225 F.B.).

favour of the Bar, while the other Judges held that a member of the Bar could be made personally liable for costs. During the course of the argument, great excitement was caused by the fact that the Judges had to admit that the Bench hearing the appeal was wrong and the decision of the lower court should have been set aside. In his defence Mr. Justice Boys said that the case had not been argued before him in the manner it had been placed before the Full Bench by Sir Tej, nor the authorities on which Sir Tej relied had been cited before him ; and Sir Tej thundered back that it could not, therefore, be said that whenever a Judge thought that counsel was in the wrong he was necessarily in the wrong.

Another interesting episode that I might mention which also came up before the Court for judicial decision was the question whether a member of the Bar could sue for his fees or could be sued for the refund thereof. There was an old Full Bench decision of the Allahabad High Court in which a litigant had filed a suit against Sir Charles Ross Alston for refund of fees on the ground that he had not been able to attend to his case. It was held that a Barrister's fee was an honorarium and a Barrister could neither file a suit to realise the arrears of his fee nor could he be made to refund the amount received by him. The question arose in an Advocate filing a suit in the District Court for realisation of the balance of his fees which had not been paid. The suit was dismissed on the basis of the old Full Bench ruling. In the High Court the lawyer was represented while the litigant was not. Sir Lal Gopal Mukerji, before whom the case came, was the Acting Chief Justice and he decided to give notice to the Vakils Association and to the Bar Library, and while the Bar Library took up the attitude that what the lawyer got was a mere honorarium and he had no legal remedy nor was there a legal remedy against him, the Vakils Association took up the opposite view. Dr.

Kailash Nath Katju appeared on behalf of the Vakils Association and Mr. Abdul Majeed Khwaja and myself on behalf of the Bar Library; but the learned Acting Chief Justice and the majority of his brother Judges took the view that the engagement of an Advocate came under the Contract Act and was governed by its provisions.

How a Judge, faced with his own wrong decision, can at times be put in a very awkward position, was demonstrated once when Sir Shah Mohammad Sulaiman differed from a Single Judge decision of Mr. Justice Lalit Mohan Banerji on a point of Hindu Law. The case was referred to a Full Bench and Sir Grimwood Mears constituted a Bench of three Judges, Sulaiman, Boys and Banerji. Counsel attacking Mr. Justice Banerji's view was doing it gently and with a great deal of circumspection, but Mr. Justice Boys was forthright in his condemnation and Mr. Justice Banerji was smarting under his criticism. Suddenly we felt a change in the atmosphere. Mr. Justice Banerji had sent for his original judgment and found that it was entirely different from the reported judgment, which had been edited by the President of the Council of Law Reporting, Walsh, J.

I do not want in this article to give my reminiscences but I am tempted to mention certain gentle repartees of Mr. Pearey Lal Banerji which made the judge, Sir Edward Bannet, feel very uncomfortable. Once Sir Edward pointed out to Mr. Banerji that he (Mr. Banerji) had no experience of the conditions inside a jail. Mr. Banerji quietly replied that he bowed to his Lordship's experience as he had never had till then the experience of having to spend a night in jail. The judge took great pains to explain that all his experience was derived from his being a jail visitor. On another occasion Sir Edward mentioned to a counsel from Bihar who had been a judge (Mr. Manukh) that he did not know how a Judge's mind worked, Mr. Banerji quietly remarked that Mr. Manukh had just

retired from the Patna Bench. Once Sir James Allsop asked Mr. Banerji his age. On Mr. Banerji telling him that he would complete sixty on a certain date, Sir James said "If you were on the Bench, Mr. Banerji, you would be thinking of retiring." Mr. Banerji said "Not necessarily, My Lord, I may not be then completing sixty."

Mr. Justice Boys was very particular about little details and some days after he was appointed a Judge, he sent for Mr. Baleshwari Prasad from the Vakils' room and me from the Bar Library to point out that a comma had been misplaced in the copy of the Letters Patent included in the High Court Rules and his Lordship had worried about it for three days till he discovered the mistake by comparing the copy with the original Letters Patent. He pointed out that he was amazed that so many generations of lawyers had not discovered the mistake. Mr. Justice Boys was very particular in taking down full notes. Once Dr. M. N. Agarwala started by saying that so and so were brothers. He could not give the name of the father. Mr. Justice Boys insisted on having the name—Dr. M. N. Agarwala said the name was not material. Mr. Justice Boys said he wanted the name for his notes and Dr. Agarwala's rejoinder was "then you better put down in your notes 'some descendant of Adam'."



The High Court : My Reminiscences

By

SRI S. P. SINHA

Ex-Judge, High Court, Allahabad (now Senior Advocate, Supreme Court of India)

WHEN I joined the High Court, it was presided over by Sri Henry Richards, who had succeeded Sir John Stanley. Sir John came here from Calcutta after the death of Sir Arthur Strachey. The Puisne Judges were Sir George Knox, Sir P. C. Banerji, Sir William Tudball, Sir Mohammad Rafiq, Sri Theodore Piggot and Sir Cecil Walsh. They were all very able; some were even great names. It required gifts of a high order for any one to make his mark in this galaxy, but Sir Henry soon distinguished himself.

Sir Henry joined the Allahabad High Court in 1905 after the retirement of Mr. Justice, and later Sir Henry Blair. He soon picked up almost every branch of the law, not excluding that most technical of all technical laws, the U. P. Tenancy Act, as also the U. P. Land Revenue Act. Those were the days when almost every one stumbled over the rival jurisdiction of the Civil and Revenue Courts and over Section 233 (K) of the Land Revenue Act, the provision about the Partition and Union of *Mahals*.

But, it was given to him to explain its true meaning in the Full Bench case of *Shambhoo vs. Daljit*, A. I. R. 1916 All. 293.

A word about Strachey and Stanley will not be out of place. I never saw them, but they had left "footprints on the sands of time". Their decisions were frequently cited. Indeed, through their Judgments and their great traditions, the memories of Sir Comer Patheram, Sir Robert Stuart, Sir Charles Turner, Sir John Edge, Sir Arthur Strachey and Sir John Stanley are fresh in our minds. Stuart is ancient history, beyond my ken and I have no intentions to delve into it. Patheram and Turner went as Chief Justices to Calcutta and Madras. Edge was elevated to the Judicial Committee after retirement. Strachey died a premature death. Sir John Stanley retired in 1911 after serving his full term as Chief Justice.

A word of tribute to that august body, even today, may not be out of place. Truly it was the palladium of justice, untouched and unaffected by passion and prejudice. The recent case of the African *Kabaka* and the well known *Tai Maharaj* case of Bombay, 42 I. A. 135 will bear ample testimony to it. It is a matter of pride to this country that it gave to that distinguished body a most brilliant and erudite Indian. Sir Syed Ameer Ali rose to the full height of its traditions. It is also remarkable that some of his best judgments, which have become classics, are on some of the most intricate questions of Hindu Law—*Budha Singh vs. Laltu Singh*, 42 I. A. 208 ; *Vidya Varati vs. Beluswami*, 4 I. A. 302. *Vidya Varati* has become almost a legend.

I would like to say a few words about Strachey. The legal world particularly Indian opinion will not agree with him when, presiding over the first Tilak trial, he gave an extended meaning to Section 124 (A) of the Indian Penal Code, but that should not prevent us from giving him the meed of praise which is his due. He was a most successful Government Advocate before his translation to Bombay, equally at home both in civil and criminal cases. As the Chief Justice, he was an outstanding success.

That gifted lawyer and author of marvellous memory, Satya Chander Mukerji, recited numerous anecdotes of his unfailing courtesy and inexhaustible patience on the Bench.

Sir John Stanley, before he came here, was a Puisne Judge at Calcutta. Stanley's are great names in English history and Sir John was the very embodiment of courtesy, dignity and kindness. He was the master of a style, chaste and elegant, with the unchecked flow of a placid stream. My father was full of admiration for him and always mentioned two incidents, which happened in the early days of his career. He filed an application for review in a second appeal decided by Sir John Stanley and Sir William Burkitt. He had no practical experience and went only by what is contained in Order 47, Rule 1 of the Code of Civil Procedure. Sir William belonged to the class of Tyrrel, Knox, Aikman and later of Tudball, Piggott and Lindsay—familiar with every branch of the law. He was endowed with a keen intellect, but not with an affable temper. As soon as Father stood up he said "How have you filed it? There is no ground for review". Sir John at once assumed the reins and put it to Father :

"My dear Boy, how many grounds have you taken?"

"Seven, my Lord".

"Don't mean to say that we have made seven mistakes in deciding this small second appeal!"

The court roared with laughter. Father sank in his seat and vowed never to file a review again.

There was yet another incident which reflects the highest credit on Sir John and the independence of the judiciary.

Once, on their way from Simla to Calcutta, Lord and Lady Curzon broke their journey at Allahabad. They decided to pay a visit to the High Court. On their arrival, the Registrar ushered the Viceroy and Vicerene in the court of the Chief Justice, sitting with Sir William Burkitt. It was either Conlan or Colvin who was then addressing the court. The visitors

sat behind the Judges. The Judges did not look back; the counsel continued his argument as before; the proceedings were not stopped, not even disturbed. When in the evening, they met at an "At Home" at the Mayo Hall, Sir John said "Your Excellency, you will appreciate, we represented the Crown at the moment; it would have been a disrespect to it if we had allowed the work of the Court to have been disturbed". "I quite appreciate it" replied the Viceroy very good humouredly.

To me personally Sir Henry Richards was extremely good and so was Sir P. C. Banerji. Father never saw a Judge at his house, but I persuaded him to take me to Sir Henry.

"Hullo! . . . If your son had not brought you, you would never have come."

After that he turned to me and said, "I can place before you no higher ideal of professional rectitude, than that of your father. When he makes a statement at the Bar we accept it implicitly". Naturally, I felt proud and happy. The next day I was offered a pauper brief, then entirely the gift of the Chief Justice. I worked hard and thought I had a good case, but the learned Judges, Sir George Knox and Sir P. C. Banerji, repelled all my contentions and the sentence of death was confirmed. The accused was poor and I had a feeling that the necessary materials in his favour could not be brought on the record. I never accepted a pauper brief thereafter.

With Sir Promoda Charan Banerji, we had almost family relations. He was a Munsif at Azamgarh, when my great grandfather, Rai Bhagwan Prasad, was the Subordinate Judge there. Sir P. C. Banerji believed in old world courtesy and took very kindly to father, but specially so to me.

His affection for me was almost boundless, that had its own effect. But, when I saw his exalted character evoking not merely a feeling of respect but of veneration all round, my devotion to him became a chapter in romance. In later years, I had begun to look upon him as a Divinity, entitled to my unquestioning obedience.

A word or two about Sir Edward Chamier. He started life at Lucknow and, after some time, succeeded Sir Arthur Strachey as the Government Advocate. He went back to Lucknow as Judicial Commissioner and after serving in that office with great distinction, he returned to Allahabad as a puisne Judge. On the establishment of the High Court at Patna, consequent upon the creation of Bihar as a separate province, he was selected as its first Chief Justice. Commenting upon his elevation and translation to Patna, the Allahabad Law Journal observed :

“Once again, the Allahabad High Court may take pride in performing its allotted function of a nursery of Judges for other Courts. Madras has had two Chief Justices drawn from our Court. We gave Bombay a Chief Justice and a Judge. Calcutta, too has had a Chief Justice and two Judges from Allahabad and Punjab, too, still pining for a High Court, had a Judge from the Allahabad Bar, who subsequently rose to be the Chief Judge.”

(A. L. J. R. March, 1916 Notes p. 45).

After retirement he was appointed to the Council of the Secretary of State for India in London. In every office and every sphere he distinguished himself. It may not be known to many that Bombay owed its extremely popular Chief Justice, Sir John Beaumont, to Sir Edward. After leaving Bombay Sir John distinguished himself as a member of the Judicial Committee of the Privy Council.

It is, however, no reflection upon Sir Edward—views differ and nowhere is there such a marked difference as in the sphere of law—that some of his outstanding Judgments were upset by the Judicial Committee. I might refer to one—*Mehdi Ali Khan vs. Mandir Das* [I.L.R. 34 All. 511 P. C.]) which, for more reasons than one, had created a sensation in the legal world and also in high social circles at Lucknow.

In October, 1918, the corridors of the High Court were ringing with the achievements of Sir Sunder Lal and that most polished advocate

and master of English language, Mr. J. N. Chaudhari. To a class all his own belonged Dr. Satish Chandra Banerji, who deserves more than a passing notice. He was an erudite and profound lawyer who had learnt his early lessons in law at the feet of Syed Mahmood, an imperishable name in the legal world. He was probably the greatest Shakesperean of his time in India and was recognised as such even by Professor Dowden. The Universities of Allahabad and Calcutta do not record another instance of a student sitting for his B.A. at both the Universities the same year and securing a first class first with honours in English literature at both. History repeated itself the next year when he appeared for his M. A. at both. A distinction like this is unique in the annals of education anywhere in the world. Lord Lansdowne, the then Viceroy, as the Chancellor of the Calcutta University referred to his achievements in terms of the highest commendation.

Even great names and great events of history are not immune from the ravages of time, but the process of erosion could not obliterate the memory of Conlan, Colvin and Ram Prasad. Sir Tej Bahadur Sapru was never tired of telling us that they remained unrivalled at Allahabad and unsurpassed in India, or even outside. Father was also an enthusiastic admirer of Sir Walter Colvin and of Munshi Ram Prasad. From the latter he learnt his law and those high moral principles, the pursuit of which has invested the profession with a dignity all its own. After the premature death of Munshi Ram Prasad, most of the briefs came to father, as he had worked in his chamber. The senior briefs mostly went to Sir Walter Colvin. He was struck by father's sublimity of character and his unremitting devotion to duty. He took father as his Junior in a number of out-station cases. He was an All-India figure and had a tremendous practice. As Sir Charles Ross Alston, in his own inimitable style, observed on his untimely death—

“Sir Walter Colvin was a man of uncommon merit and indefatigable energy. Today, he is arguing a heavy first appeal here : tomorrow

he is prosecuting the murderer of Colonel Azim Uddin Khan of Rampur; a day after, he is defending an accused in Alwar. At the end of the week, he is conducting a heavy Civil Suit at Hyderabad. Back again, he is in the midst of a heavy Civil appeal. His uncommon talents were in request in every important case, Civil or Criminal, in both of which he was equally at home. He was at his best in a losing case. None knew better than he how to avoid the shoals and rocks in a losing case."

He was singularly free from racial prejudice. A few others notable among them M. Gokul Prasad, Dr. Tej Bahadur Sapru and Dr. Surendra Nath Sen, were also encouraged and supported by him.

The cream of the civil work was in the hands of Mr. B. E. O'Connor, Dr. Tej Bahadur Sapru and Dr. Surendra Nath Sen. Peare Lal Banerji, Iqbal Ahmad and Kailas Nath Katju came after, long after, them. Uma Shankar Bajpai was forging ahead. Munshi Gulzari Lal and Munshi Haribans Sahai had also good civil work, but they were fading out. Mr. Durga Charan Banerji, at one time, commanded a large practice, both civil and criminal, but he had virtually retired, though he continued to be the Secretary of what was then called the Vakils' Association. He gave his very best to that office and commanded the respect of every member. Among those who also mattered were Mr. Nihal Chand, Dr. Agarwala, Mr. Aga Haider, Mr. Raza Ali and Mr. Lakshmi Narain, the son of Mr. Gobind Prasad. Mr. Nihal Chand had fairly good civil and criminal work from the Western districts of the Province. Dr. Agarwala had achieved great distinction as an author and scholar. He and Mr. Haribans Sahai were well known for their knowledge of the Tenancy Law. Aga Haider went to Lahore as a High Court Judge and Raza Ali, who later became Sir Raza Ali, was appointed a member of the Public Service Commission and then Agent to the Governor General in South Africa. Mr. Lakshmi Narain was doing very well, but he accepted a seat on the Bench of the Bikaner High Court.

On the criminal side the three most prominent names were C. C. Dillon, Sir Charles Ross Alston and Mr. Satya Chandra Mukerji. G. P. Boys and G. W. Dillon had fairly good practice. So had R. K. Sorabji, Howard and Hamilton. Mr. W. K. Porter was once the Assistant Government Advocate, and the Editor of the Allahabad Weekly Notes. He was a very well read gentleman, of scholarly habits.

Mr. C. C. Dillon, complete master of his brief, spoke the choicest language and always carried the Court by his gentle and most persuasive advocacy. Sir Charles Ross Alston, brilliant and ready witted, had the knack of going to the root of the case almost immediately. Within a few minutes and in a few words he could disentangle the skein even in a most complicated matter. Satya Chandra Mukerji had built an enormous criminal practice, both in the High Court and outside. Of Lord Morely it was said that "his straying into politics had not lost him to literature." Satya Chandra's "History of India under the British Crown" is a tribute to his scholarship.

Boys was known for his thoroughness. R. K. Sorabji, was also the Vice-Principal of the University School of Law. With the income at the Bar supplemented by income from these sources, they were happy and contented. So was Hamilton, with his modest income and extremely quiet disposition.

There were three Crown counsels, as they used to be called then. Mr. A. E. Ryves, the Government Advocate, Mr. R. Malcomson, Assistant Government Advocate and Mr. Lalit Mohan Banerji, the Government Pleader. Ryves, the very soul of honour and goodness, commanded universal affection and esteem. He was ably assisted by his two lieutenants.

G. W. Dillon, Gokul Prasad and S. K. Dar formed a class by themselves. G. W. Dillon had none of the elegance of his father, C. C. Dillon, nor his scholarship or his gentle persuasiveness. But he was lucid and forthright. He was at home both on the Civil and Criminal sides.

Mr. Gokul Prasad and Mr. S. K. Dar, belonged to the same class—complete mastery of the brief, a keen analytical mind and enormous industry. The former was gentler, and more persuasive and always remained unruffled; Mr. Dar argued every case with the fervour of an evangelist. He almost lost his being in it.

I shall now come to three names, each of them formed a distinct class—Moti Lal Nehru, William Wallach and Shah Mohammad Sulaiman.

Moti Lal Nehru had become an All-India figure both in law and politics. Politically he vied with men like C. R. Das, Jinnah, S. Srinivas Iyenger and Hasan Imam. Sir Tej Bahadur Sapru and Sir Ali Imam belonged to a different school of thought. In the realm of law, his position was unique. There was no case of importance in the country, in which he did not appear. He was an all-rounder, a first rate draftsman, cross-examiner, case builder and an advocate.

I heard him in a few cases, but there is one to which I shall allude, because I had occasion to watch him at every stage. It was the Lakhna Raj case. His ultimate success before the Privy Council was a tribute to his original thinking. Sir George Rankin's Judgment, *Narsing Rao vs. Mahalakshmi*, 55 I. A. 180, is entirely based upon his line of argument. It might be mentioned that the legal world received the decision not without an element of surprise. It is, however, unnecessary to pursue the matter further. It was so again in the Kayastha Pathshala case, a case which had created a sensation in the educational world. Sir George Rankin accepted his line of reasoning, set aside the Judgment of the Allahabad High Court and held that the suit was wholly misconceived. (*Kayastha Pathshala, Allahabad vs. Musammat Bhagwati Devi*, 64 I. A. 5.) We received the news with a sigh of relief.

William Wallach used to be engaged by the Government in almost every important case—Civil or Criminal. He was extremely popular among the Indians. One could see him, whenever he was free, sitting mostly

in the Vakils' Association. He was a very popular social figure and had an open table. The junior members of the Bar engaged him frequently as a senior. He officiated as a Judge for a few months, after which he settled down in the Privy Council. He built up a large practice there. I once sent him a brief in 1929. The case involved a very important question of law—whether the principle of estoppel enshrined in Section 41 of the Transfer of Property Act had any application to a minor. The Allahabad High Court held, it had: the Privy Council held differently. (*Shankar vs. Daoji*, I. L. R. 53 All. 290: 58 I. A. 206.) He won the case and wrote to me a very affectionate letter making enquiry about my father and the other members of the Bar with whom his relations were particularly cordial.

I now, come to a very important name whose rise at the Bar was meteoric and whose reputation travelled all over the country. Dr. Sulaiman had a spark of genius. To one of the keenest intellects and a most extraordinary memory, he joined phenomenal industry. I knew him very intimately. Shortly after I joined the High Court, father, as I have said, retired from the profession. Almost all his briefs came to me and my appearance in the Court was frequent. Sir Henry Richards and Sir P. C. Banerji, as I have said above, and, later Sir Lal Gopal Mukerji, were particularly kind to me. My teacher, Mr. Peare Lal Banerji, who had, by that time, built a very high reputation for his mastery both of law and language, was never tired of extolling me. Dr. Sulaiman, probably noticed all this and one day, when I was standing in the corridor, he came to me and said, "Will you care to hold my briefs?" I was so overwhelmed by this unexpected kindness that with great difficulty I could say, "Yes". I had countless occasions to watch him and his method of work. There was no case too complicated for him. There was no branch of the law with which he was not thoroughly familiar. He hardly prepared any notes and, however heavy the case and however complicated the facts, he forgot nothing and missed nothing. Within a few years of his joining the High Court he argued

a heavy first appeal, raising several important questions of law, with such singular ability that he was openly complimented by Sir Henry Richards. Sir P. C. Banerji, who delivered the Judgment made a very appreciative reference to his argument (*Ali Husain versus Fazal Husain*, I. L. R. 36 All. 431.)

No wonder that the youthful looking lawyer who joined the High Court in 1912 at the early age of twenty-six, became an officiating Judge in 1920 to be made permanent in 1923, the Chief Justice in 1932 and a Judge of the Federal Court in 1937. Mahmood, Muthuswami and Bhashyam Iyenger were great jurists; Ranade, Mitter, Tayabji and Telang, were great Judges—they had behind them the study and experience of a life time, but in sheer keenness of intellect, Sulaiman was second to none. On the bench too, he was an unqualified success. He never said an unkind word to any one. It was an ideal combination when he sat with Sri Lal Gopal Mukerji, who was also a great Judge and the very embodiment of patience, courtesy and dignity.

He retained his habits of scholarship till the end. He used to have correspondence with Professor Einstein on subjects of his study. Men like him are not born everyday. They are born after long periods of history to exemplify the altitudes human endeavour can attain.

It may be mentioned that Sulaiman had three immediate contemporaries and they were great friends: Jamini Mohan Banerji, Nawab Mohammad Yusuf and Jawaharlal Nehru. Jamini Mohan, the second son of Sir P. C. Banerji, was rapidly forging ahead on both sides, but essentially on the criminal side. A very promising career was cut off when he suddenly died in England, probably in December 1924. Mohammad Yusuf turned to politics and did extremely well. He was appointed Minister and later, knighted. He was endowed with a nature, which believed in doing good to everyone. Sir C. Y. Chintamani criticised him, perhaps with more zeal than discretion, in the columns of "The Leader" almost every-

day, for years, but, at the end, paid him a most generous tribute as a great gentleman.

The third and the greatest was Jawaharlal Nehru. He lived to be the first Prime Minister of free India. Prime Ministers come and Prime Ministers go, but a Jawaharlal does not always come. He will be remembered as one of the makers of post-Independence India. I cannot do better, than to quote the tribute paid by Oliphant Smeaton to Gibbon, the author of the Decline and Fall of the Roman Empire :

*"He died as he lived,
a noble-hearted, sympathetic,
great-souled man, who left
the world, a debtor to all time".*

His death on May 27, 1964, was a national calamity and scenes of unparalleled devotion to him and his memory were witnessed all over the country. Indeed, the tributes transgressed all geographical limits. He was, in the words of Mathew Arnold, one of the

*"Souls tempered with fire,
Fervent, heroic and good,
Helpers and friends of mankind".*

Before I come to the three main figures who held the centre of the stage, I would like to mention just in passing, a few lawyers of other High Courts who sometimes appeared in our High Court: Sir Ali Imam and Mr. Hasan Imam of Patna, Mr. Langford James of Calcutta, Mr. Jinnah and Mr. Bhula Bhai Desai of Bombay and Mr. Jagan Nath Aggarwal of Lahore.

Sir Ali Imam could argue a case for days and days in the choicest language. He argued a very difficult criminal appeal before Sir Cecil Walsh and Justice Pullan for a week. Imperceptibly and slowly, but surely, he laid bridge after bridge and ultimately persuaded a reluctant Court to his view. Hasan Imam was quick and extremely intelligent.

But, in sheer brilliance, it was difficult to find advocates like Jinnah, Bhula Bhai Desai and Jagan Nath Agarwal. They seemed to carry everything before them.

It is so difficult to describe Langford James. Brilliant, painstaking and extremely well prepared, he cast a halo and an atmosphere which were simply irresistible.

I now come to B. E. O' Conor, Dr. Tej Bahadur Sapru and Dr. Surendra Nath Sen. I appeared with Mr. B. E. O'Connor and against him in numberless cases. He was easily one of the best advocates on facts. He was called "the prince of facts". He created such an atmosphere in his favour that his opponent could hardly dispel it even with the aid of a "heavy battery" of books and authorities. Father used to say that Chaudhri and Moti Lal Nehru reminded him of Sir Walter Colvin and Mr. Ram Prasad, whereas O'Connor was more akin to Mr. Conlan, whose pupil he had been. The year 1937 witnessed the exit of two giants of the Allahabad Bar. Sir Charles Ross Alston on the criminal and Mr. O'Connor on the civil side.

Sir Tej Bahadur Sapru filled such a large space in the legal and public life of the country—both some times closely interwoven—that it is difficult to do full justice to him as a lawyer. His entry in the legal profession was heralded by a scholastic career of unusual brilliance, second only to that of Dr. Satish Chandra Banerji. Satish was claimed both by Aligarh and Agra; Sapru belonged entirely to the Agra College. He stood first in all the examinations. His success at the Bar was a foregone conclusion. His outstanding qualities were an unfailing memory, thoroughness and a complete mastery of the facts of the case and the law bearing on it. His command of English was superb. This, with his faultless pronunciation and perfect intonation, invested his argument with a charm all its own. Add to it an immaculately dressed man of great personal charm, and the picture of Sir Tej Bahadur is complete. A senior more considerate to the junior it is so

difficult to imagine. In later years my friend and contemporary, Mr. Ajudhya Nath, had made himself indispensable to him. Sir Tej treated him as a member of the family.

I still remember a case, in the very early days of my practice, which came up for hearing before Sir Lal Gopal Mukerji and Mr. Justice Dalal. Mr. O' Conor with one or two others appeared for the appellant. Sir Tej Bahadur Sapru appeared for the respondents. The case-law on the subject was scanty. The client came to know that my strong-point was case-law and I was engaged to assist Sir Tej. Fortunately I knew one ruling and we won the case mainly on account of it. Dr. Sapru was not only profuse in his admiration, but, what gladdened my heart, more than anything else, was that in the evening, he saw my father and spoke to him appreciatively about me.

It is impossible to refer even to the important cases argued by him, which I closely watched, even though I did not appear in them. I cannot help alluding to two of them. The first was a case of family settlement. It was a case of the Jains of Saharanpur. Dr. Sen argued it for several days before Mr. Justice Lindsay and Mr. Justice Kanhaya Lal for the appellant, Sir Tej Bahadur argued it for the respondents (*Badri Das vs. Janeshwar Das*).

The other was *Basant Singh vs. Brij Raj Singh*, (1929), 62 I. A. 180. The question was whether the presumption raised by Section 90 of the Indian Evidence Act could be extended to the original even when what was produced from proper custody was but a copy. The case related to one of the premier Jat States in Western U. P. It attracted considerable public attention not only by reason of the high stakes, but because the defendant, Brij Raj Saran Singh, was the adopted son of Rao Khushal Singh, son of Raja Nahar Singh, one of the staunchest adherents of the last Moghul emperor, Bahadur Shah, in the uprising of 1857. Nahar Singh was the bravest of the brave. He and the Nawab of Jhajjar were the despair of the

British. The history of India would have been different if Nahar Singh had not fallen a victim to one of the foulest betrayals in history, the author of which was probably the notorious Hudson at whose barbarity even Nero and Caligula would have blushed. He murdered the two sons of the King, placed the severed heads on a plate and placed them before the unfortunate King and said "Here is your breakfast". The old King, with a calm and sublime resignation, truly angelic and with a touch of the divinity only remarked :

ظفر آدمی اُس کو نہ جانےو ہو وہ کیسا ہی صاحب فہم و ذکا
جسے عیش میں یاد خدا نہ رہے جسے طیش میں خوں خدا نہ رہے

*"Zafar ! do not consider him to be a man,
Howsoever, wise and foresighted he may be,
Who in happiness thinketh not of God,
And in anger fears Him not"*.

I hope I shall be forgiven this digression. The Subordinate Judge refused to extend the presumption and held the will not proved. The High Court, Sir Shah Sulaiman and Sir Henry Kendall, and the Privy Council did the same, but held the will otherwise proved.

He distinguished himself equally in politics and was made the Law Member in 1921 and a P. C. in 1934. He was one of the finest specimens of Urdu and Persian culture.

*"Whose pleasures are of crimeless kind
That ne'er taint the soul"*.

Dr. Surendra Nath Sen was a profound lawyer. Of Sir Rufus Isaacs, later Lord Reading, it was said that he was a lawyer to the finger tips. So was Dr. Sen. His rise at the Bar was also phenomenal. He was one of the finest products of the Canning College, Lucknow, from where he took his M. A. in English, standing first class first. After passing the LL.B. he practised for a number of years at Azamgarh and shifted to the High Court somewhat late in life, in 1902 or 1903. He had hardly to wait. He soon caught the eye of Sir Walter Colvin, Mr. C. C. Dillon and Mr. J. N.

Chaudhri. Sir Walter and Mr. Dillon frequently engaged him as a Junior. This gave him both work and dignity. In 1906 he passed the Honours in Law Examination, which really meant the crossing of the Rubicon. After that his rise was rapid. In the shuffling of cards which followed the death of Dr. Satish Chandra Banerji in 1915, and of Pandit Sunder Lal, 1918, the appointment of Sir Tej Bahadur Sapru as the Law Member and of Moti Lal Nehru becoming an All-India figure, both in law and politics, Dr. Sen found himself at the top on the civil side, rubbing shoulders with O'Connor. There was hardly a first appeal in which he did not appear. He had also tremendous *Mufassil* practice, and, next to Pandit Moti Lal Nehru, he commanded the highest fee both in the High Court and outside. There was no branch of the Civil Law of which he was not a complete master.

My friends, Narbadeshwar Upadhyaya, Mukhtar Ahmad and S. N. Gupta and myself persuaded him to give some of his precious time to politics. A club called 'Saturday Club' was started. Almost all the leading newspapers both Indian and foreign, were subscribed. We met at his house every Saturday and discussed the burning topics of the day.

As a lawyer of outstanding merit and as a mark of the high esteem in which he was held, the Government of India appointed him a member of the Transfer of Property Act Amendment Committee in 1927; the other members were Mr. S. R. Das, the then Law Member, Sir B. L. Mitter, who succeeded Mr. S. R. Dass and Sir Dinsha Mulla. He acted as a Judge of the High Court for a few years from 1928 to 1932. As expected, he brought to bear great learning on his duties. Some of his decisions bear the stamp of profound learning. But, paradoxically enough, one of his best considered Judgments on a very important question of Hindu Law and estoppel, was set aside by the Privy Council (*Kalawati vs. Dharam Prakash*, 60 I. A. 90.)

There remain only two names to be noticed, Peare Lal Banerji and Uma Shankar Bajpai. Bajpai had a brilliant academic career and after

taking his B. A., from the Canning College, Lucknow, and M. A. from the Muir Central College, Allahabad, he was appointed a professor of English. His felicity of expression stood him in good stead in the profession when he joined the High Court in 1910. When he was appointed Government Advocate in 1927 he had fairly good practice. He officiated as a Judge in 1931 and was then made permanent in 1932.

I now come to the last of the race of giants, Mr. Peare Lal Banerji. It is difficult for me, despite my loyalty to truth and precision, to speak or write about him without laying myself open to the accusation of inexactitude. He was my teacher in the law class and bestowed his best affection on me. He was never tired of extolling me. In his 'Contemporary Personalities' Lord Birkenhead, speaking of Philip Snowden, has said "with such an old and intimate acquaintance, it is difficult for me to paint his character on the canvas with dark pigments".

Fortunately, in describing him, dark pigments are absolutely out of place. He was a profound lawyer, well versed in the principles of law, and had developed a method of argument all his own—clear, precise and terse. He had mastered the judgments of the Privy Council and of the House of Lords with the result that he spoke the most correct legal language. Indeed as one heard his arguments, one some times felt as though one was reading a page from the judgment of Knight Bruce, Westbury or Macnaughten or Sumner, Ameer Ali and Arkin. It is no wonder he worked his way to the top of the profession. Besides, he had built a tremendous out-station practice, both in Agra and Avadh. There was hardly any case of importance in which he did not appear. In the High Court, he was generally opposed to Katju and Iqbal Ahmed and sometimes also to S. K. Dar. But, outside, we were generally opposed to each other. It was then that I particularly noticed how very very fair he was. The suitor received the benefit of his great talents, but the bother of his self always remained

with him. He never surrendered his conscience to the client or the court. He was modest to a fault. He never spoke of his achievements. Success, the most signal and crowning, did not elate him; failure, however, depressing, did not depress him.

Adversity, one's own or another's, is the acid test of one's character. In the darkest hour of my life, he stood by me as few did. He came to my house every day and consoled and cheered me.'

*"The hues of bliss more brightly glow
Chastised by saline tints of woe".*

The U.P. Government did itself the honour of appointing him Advocate General. He not only maintained but raised the dignity of the office to heights, probably none to be attained in future.

He died in 1952, leaving an "aching void" in the profession. With him went the last of the Romans.

His words are still ringing in my ears and I now feel with the poet:

*"I know there is no error
In the great, eternal plan,
And all things work together,
For the final good of man".*



“Resurrected Impressions”

By

MR. B. MUKERJI,

Retired Judge, High Court, Allahabad

MY acquaintance with this Court goes back, in a sense to my childhood : it was a kind of vicarious acquaintance through maternal lineage : Sir Promoda Charan Banerji who was appointed a Judge of the High Court in 1893 was my mother's uncle. A High Court Judgeship in those days when Sir P. C. adorned the Bench, 1893 to 1923, was something “great”. There were only six Judges then and at the time of his appointment he was the only Indian to adorn the Bench. The salary was Rs. 4,000 which would in terms of today's depleted purchasing power of money be something in the neighbourhood of Rs. 15,000. Income-tax was negligible, and service unbelievably cheap. Those were spacious days but the ‘Court’ was not as spacious as it is today.

The High Court on its transfer from Agra to Allahabad, sat in one of the blocks of buildings on the what is now, Sarojini Naidu

Marg: it was the Southern-most block: a sombre, stone-flagged, double-storied mid-Victorian building. The building reflected the dignity and the stolidity of the early judiciary. In 1916 the High Court moved to its present habitation—it was not then the sprawling overgrown building which we now find, but it was then a more pleasantly proportioned construction. Looking at the building as it was then and as it is now, one is tempted to think whether ‘over growth’ and patch-work did not reflect something more than mere inartistry of building construction.

A High Court Judge in the early days of the 20th century conjured up in the mind of the common man an almost mythical figure. There was then a tremendous amount of respect, almost awe for the presence of a High Court Judge—‘the public’ saw so little of the Judges outside court: Were they dwellers in ‘Ivory Towers’—they were not: not certainly in any disparaging sense. The Judges of the ‘olden days’ knew everything worth knowing about the customs, manners, joys, sorrows, strengths and weaknesses of the peoples that went before them seeking justice. They were “His Majesty’s Judges”.

‘His Majesty’s Judges’, in India, yielded place to Judges of the Constitution—‘Constitutional Judges’ if we may call them so or should we call them the President’s Judges? Has the change over—a change in the constitutional position of the Judges made a difference—a difference in their mental attitude, a difference to their social position? Has it added to the ‘Halo’ or has it dimmed it? These are delicate questions which I prefer to leave to be dealt with by a future constitutional historian.

Even when Judges were mostly Europeans and even when public appearance by Judges was much less than it is today one could see that there were colourful personalities on the Bench.

There were sportsmen Judges, a "Cricketing" Judge, Actor Judges, and Judges who took keen interest in the educational activities of the town. Thinking of sportsmen Judges one is immediately reminded of Justices Stuart and Tudball. Mr. Justice Walsh was a cricketer—he was fond of cricket and gave one the impression that he was a cricketer of fame. His was a colourful personality in more senses than one. It was he, who as the Acting Chief Justice, created history for the Court. This needs recounting and recording.

A first Appeal Bench consisting of Mr. Justice Dalal and Mr. Justice Pullan (both of the Indian Civil Service) was constituted and First Appeals were listed before them (under the orders of the Acting Chief Justice, Mr. Justice Walsh : Sir Grimwood Mears, the Permanent Chief Justice having been on leave in England) under O. 41, rule 11 of the Code of Civil Procedure as the expression goes, for "admission", "admission" of First Appeals which raised questions of fact to be determined by a re-appraisal of evidence were traditionally, more or less, automatically 'admitted'. Dalal and Pullan, JJ. were not prepared to have any 'automatic admission' so they started perusing the judgment appealed against, sometimes they read the judgments at home, and called upon Counsel to show how the judgment was wrong. This new trend in the fortunes of First Appeal admission caught counsel on the wrong foot. They had neither the material nor the opportunity at that early stage to meet the 'exacting demands' of the Bench with the result that a large number of First Appeals were dismissed summarily. This affected the business of senior members of the Bar. There was considerable resentment and the then Secretary of the Bar Association (Vakils' Association as it was then called) sent a letter to the Acting Chief Justice, in a sense,

complaining against the new manner of disposing of First Appeals under O. 41, rule 11 of the Civil Procedure Code. The Acting Chief Justice thought that the letter written by the Secretary (Mr. Shyam Krishna Dar, who later became Mr. Justice Dar) amounted to contempt of Court. A notice was issued to the Secretary calling upon him to "show cause" as to why he was not to be punished for contempt. The Vakils' Association convened an emergent meeting to consider the situation that had arisen and at that meeting they decided to repeat what had been written by the Secretary in a letter which was to be signed by all the members who were on the rolls of the Vakils' Association: the object was to share the responsibility of the Secretary's letter by the entire body. The letter was sent under the signature of all the members—there were forty-seven members then and each member signed the letter: there were no waverers. It was a great gesture of unity shown by the 'indigenous bar'.

The entire membership of the "Vakils' Association" received a notice to show cause from the Court—there were now 47 'contemnors' in place of one.

The Vakils' Association briefed some members of the English Bar—Barrister-Advocates—to represent them at the hearing whenever it was fixed. The Acting Chief Justice constituted a Full Bench to decide the contempt matter but this Bench never met in open Court, indeed no Bench met to hear the contempt matter, till the return from leave of Sir Grimwood Mears, the Permanent Chief Justice, when the notice was discharged—whether on account of any judicial order or because of 'default' I cannot for certain say. This incident, fortunately did not create any kind of schism between the Bar and the Bench—something which redounded to the credit of both the Bench and the Bar. The fight was on a question of

principle and it was apparently decided on an understanding which was mutually satisfactory without the necessity of a judicial trial of strength.

Under the old Constitution a Barrister alone could be Chief Justice of this Court. Some Indian Judges had now and then officiated as Chief Justice but no Indian before Sir Shah Moham-mad Sulaiman had the distinction of becoming a Permanent Chief Justice. Of the Judges I have known personally Sir Shah Sulaiman was undoubtedly the most brilliant—he radiated brilliance. He was raised to the Bench in 1923 and became the Chief Justice of the Court in 1932. Later he was translated to the Federal Court in 1937. Sir Shah Mohammad Sulaiman's predecessor, Sir Grimwood Mears came to India in 1919 and took over as Chief Justice of the Court. Earlier he had been Secretary to Lord Reading when Lord Reading went to America as a Representative of the British Government to settle the question of Britain's indebtedness to America in respect of the first World War. Sir Grimwood Mears had a dignified presence—He was the typical Victorian Englishman : formal to a fault.

As a Judge on the Murder Bench Sir Grimwood was the most convicting Judge I have known—his one great passion, in later years of his service was to discover corrupt judicial officers and to get rid of them. This 'passion' soon made him prone to believing glibly in complaints made against judicial officers. That there were a few corrupt officers in the service could admit of no doubt, but what was doubtful was the method employed by the Chief Justice to deal with persons whom he thought, not always on satisfactory evidence, to be corrupt. This brought him a good deal of unpopularity even though the attitude which he took had a very chastening effect on the Service.

Indians started 'adorning' the High Court Bench in larger numbers during the regime of Sir Grimwood Mears. I cannot say whether it was his liberality or it was the Government's policy to have more Indians on the High Court Bench because then the number of Judges had been increased to eleven. Amongst the Indians who were Puisne to Sir Grimwood were—Justices Mohammad Rafiq, Gokul Prasad, Sir Shah Mohammad Sulaiman, Kanhaiya Lal, Jamshedjee Dalal, Sir Lal Gopal Mukerji, Lalit Mohan Banerji, Surendra Nath Sen, Niamat Ullah, Sir Iqbal Ahmad and Uma Shankar Bajpai. Each of the above were men of experience but then in the above list there were three outstanding figures—Sir Shah Sulaiman, Sir Lal Gopal Mukerji and Mr. Justice Niamat Ullah. They adorned their career on the Bench with a dignity which was distinctive. Sir Shah Sulaiman and Niamat Ullah were Lawyer-Judges of great learning and wisdom. Mukerji was deeply learned in Hindu Law and the Law of Transfer of Property. A junior was perfectly safe in their Court for no senior could take any advantage of any of the shortcomings of a junior appearing before these Judges.

Mr. Justice Lalit Mohan Banerji was the son of Sir Promoda Charan Banerji who with Sir George Knox became a legend of the Court. Lalit Mohan never achieved anything of the glory of his illustrious father. He was a kindly man fond of the good things of life. He was one of the premier motorists of the country. He was the first in Uttar Pradesh to own a Sunbeam Sports and a Rolls Royce. I vividly remember the day when his 'Rolls' arrived—it was a second-hand purchase—even so it was a 'Rolls'. The U. P. Automobile Association owes its existence to his enthusiasm and foresight. There was hardly anything worth knowing about an automobile which Justice Banerji did not know.

Sir Iqbal Ahmad was elevated to the Bench first in 1926. Soon after he came back to the Bar and then again went up to the Bench in 1931. He had a very large practice. He retired as Chief Justice in 1946. He was one of the charming seniors of my time.

Mr. Justice Bajpai deserves mention for his colourful personality—a handsome man ‘who handsome did’. He had great human sympathies. Bajpai in private life was generous to a fault—to his Juniors, while he was at the Bar, he was deeply devoted and he took genuine pleasure in their successes. He was universally loved and respected.

Of the pre-Independence Indian Judges two other judges deserve mention—Mr. Justice Ganganath and Mr. Justice Mulla, both came to the High Court Bench from the Provincial Judicial Service—the difference being that Mr. Justice Ganganath rose from the lowest rung of the ladder, namely from the position of a Munsif while Mr. Justice Mulla was directly recruited to be a District Judge. He, I believe, was the only person to have been so recruited. Mr. Justice Tej Narain Mulla was a difficult Judge in many ways, but he had his strong points. He had a stupendous memory—no one ever saw him making any elaborate notes even in heavy criminal appeals. Mulla was a good criminal Judge. In criminal cases he displayed great confidence and often became over-bearing, but sitting on the civil side, which was a rarity, he gave a different impression. He was a good bridge player, a good golfer and in his younger days had been a forceful tennis player also. Outside Court Mulla exhaled the “culture of Lucknow” from “*adab to Khoda hafiz*”

Mr. Justice Ganganath was however a different type altogether. He was dry, matter of fact, almost the sun-dried bureaucrat of the spacious ‘British Raj’ days. He wore ‘West-end tailored’ suits and enjoyed living an Englishman’s life. He was

very conversant with the case law and the Codes. He was completely hidebound by precedents. He was often impatient with the junior section of the Bar but outside Court he was very pleasant and appeared sympathetic. A section of the Bar—the observant section—saw many points of similarity between Mr. Justice Ganganath and Mr. Justice Bennet. The naughty section of junior Bar gave Ganganath the nickname of Gennet, J.

According to the law which governed the Constitution of the High Court, prior to Independence, it was necessary to have a certain percentage of Barristers on the Bench and a certain quota was reserved for the Indian Civil Service.

There had been persistent criticism against the policy of having members of the Indian Civil Service on the High Court Bench—they were once described by the Privy Council as ‘unprofessional Judges’ and indeed they were so, for they did not come from the ‘profession’. The Civil Service, however, gave this Court some very able Judges.

Of the Civil Service Judges, I knew, were Justices Kendall, Pullan, Kisch, Collister, Smith, Allsop, Hunter, Hamilton, Plowdon and Bennet.

It was a motley set—having no common denominator save that all were foreigners and all belonged to the ‘Heaven-born Service’, each within the Steel frame: There were rude I. C. S. Judges, there were extremely courteous ones, there were clever men and not so clever ones.

The Judges of my early days provided the junior section of the Bar both pleasure and pain. The sarcasm of some of these Judges was often a source of pleasure, depending of course as to who the object of that sarcasm was. Mr. Justice Bennet provided the largest amount of material for gossip at the Bar’s “Lunch

tables ” for he appeared to take a sort of malicious delight in “pitching into ” the seniors. His extraordinary capacity for tortuous and tortured “legal jiu-jitsu ” to distinguish apposite case law was the despair of many.

Mr. Justice Kendall was the very opposite of Bennet, J. In my opinion, a greater gentleman never adorned the Bench of this High Court.

The attitude of the I. C. S. Judges towards the junior section of the Bar was, by and large, either patronizing or supercilious. A junior who dressed well and spoke English well was often treated deferentially.

The English Barrister who came from England with a direct assignment was invariably a decent person, though all were not good lawyers. Most of these men had a fair grounding in the principles of law and they had the Englishman’s “uncommon commonsense” to assist them in coming to correct decisions. Mr. Justice Harris was the best of the ones I have known. He was a good lawyer and a good Judge though a “talkative ” Judge—Mr. Justice Braund was another good lawyer—a Chancery lawyer. He was painfully thorough in his hearing of a cause—he often read and prepared on his own more than he heard or took from Counsel.

Those were spacious days. There was not the hurry and the speed of the present times, though there were even then ‘arrears’ (arrears have been with us in fairly recognizable form since at least 1927) but no one was then weighed down with a sense of the arrears. We ‘opened our case’ as we chose—a first appeal was more often than not ‘opened’ with a reading of the ‘Pleadings of the parties’. No one was hustled out of a point he attempted to make. Even though Bennet, J. often attempted to ‘talk’ counsel out of his argument yet he too never made any

attempt to "hustle counsel" or shut him up. The pace was seldom forced, arguments were often shrouded in a semantic and polemic maze. His one great passion was to convince counsel that counsel was wrong—what a frustration it would have been to him if he could adequately realise that counsel was not paid to be convinced by the Judge.

Of Sir Shah Mohammad Sulaiman, one of our cleverest Judges, it was said that he talked more than counsel did. In this connection, it would be interesting to recapitulate an 'authentic story'. One day Sir Grimwood Mears, Chief Justice and Sen, J. who were forming a Bench had to wait for the appearance in their Court of Sir Tej Bahadur Sapru; and, after the Bench had waited patiently for some time, Sir Grimwood Mears asked the Reader, "Where is Sir Tej?" In the Court was sitting at the time Sir Charles Ross Alston the doyen of the Criminal Bar. He stood up and, before the Reader could reply, said promptly "My Lords, Sir Tej is hearing the arguments of Mr. Justice Sulaiman in the adjoining Court Room". Sir Tej made his appearance in the Chief Justice's Court room soon after, whereupon the Chief Justice said "Come along Sir Tej; we wish to hear you and not make you hear our arguments".

The succession of Chief Justices whom I knew, while at the Bar were—Sir Grimwood Mears, Sir Shah Mohammad Sulaiman, Sir John Thom, Sir Iqbal Ahmad, Mr. Kamalakanta Verma and Mr. B. Malik. One could find nothing that was basically common in the aforementioned galaxy: the only common factor was that they were all Chief Justices. I am purposely refraining from making any 'record' of the work of those whom God has spared to be with us today.

I have said something above about the brilliance of Chief Justice Sulaiman as a Judge. As an administrator (The Chief Justice has to be one) very few were willing to assign him any place of pride.

Chief Justice Thom who succeeded him had a comparatively short span of existence as Chief Justice and hence he made no indelible impress on the contemporary mind.

Chief Justice Malik marked the end of an era, the era of His Majesty's Judges and ushered in the era of Judges appointed under the Indian Constitution by the President of India.

On the 26th of January, 1950 all the sitting Judges and the Chief Justice took their respective oaths prescribed under the Constitution and undertook to uphold the Constitution—bearing allegiance to the Constitution. The oath was administered at the Government House at Lucknow by the Governor. It was a colourful ceremony : the Judges were all in their "ermine robes" wearing full-bottom wigs. On that date there were only twenty Judges.

One significant historical event of great forensic consequence must be noticed before proceeding further afield. The State of Uttar Pradesh—United Provinces of Agra and Oudh, as it was then named, had two Courts of the highest jurisdiction functioning within its territorial limits—the High Court of Judicature at Allahabad, established by a Letters Patent issued in March 1866 and the Chief Court of Oudh established by Act IV of 1925. The High Court exercised jurisdiction over all the territories which were outside the area known as Oudh—over this area the Oudh Chief Court exercised jurisdiction.

The existence of two Courts of Superior Jurisdiction within a single Province was something unique—the United Provinces of

Agra and Oudh alone enjoyed this distinction. There was a historical basis for this novel judicial dichotomy. Agra and Oudh had been separate administrative entities and the latter came into British hands after its "annexation" in 1856. There were for many decades many separate laws and administrative differentials. There existed in Oudh an aristocracy—the Taluqadars of Oudh—who, for political reasons, enjoyed a status at the hands of the Government of the day which was not enjoyed by any "class" in Agra. The Taluqadars wanted differential treatment, they wanted a High Court of their own, so to speak. The Government of the day thought it politic to pamper them with the result that Oudh got a Chief Court.

The Chief Court functioned as a Court of highest jurisdiction inasmuch as appeals lay from it to His Majesty in Council—the Judicial Committee of Privy Council. The Oudh Chief Court had Original Civil Jurisdiction in respect of a certain class of cases—Taluqa cases as they were popularly called.

The Oudh Chief Court had a Chief Judge to preside over its destinies; the first of these was Mr. Justice Stuart who came to the Chief Court as its Chief Judge from Allahabad and its last Chief Judge was Mr. Justice Ghulam Hasan.

The Oudh Chief Court ceased to function as an independent Court on July 25, 1948 when as a result of the "Amalgamation Order" the High Court of Judicature at Allahabad and the Oudh Chief Court at Lucknow were amalgamated and a "New High Court" came into existence. By virtue of the provisions of the Amalgamation Order it was obligatory to maintain a Bench of the High Court at Lucknow. In 1948 when the Courts were amalgamated there were five Judges sitting at Lucknow—this was obviously more than the minimum requirements under the

“Amalgamation Order”. The number of Judges sitting at Lucknow has since been augmented—there have been some changes in the territorial jurisdiction of this Bench from time to time.

After the legal “amalgamation” an impressive ceremony took place at Allahabad on July 26, 1948, in the Marble Hall above the stairs when all the erstwhile Chief Court Judges came to Allahabad and all the Judges of Allahabad and Lucknow—again took oath as Judges of the ‘New Court’. The then Governor of Uttar Pradesh a most colourful personality, Sarojini Naidu presided. The then Chief Minister, the late Pandit Govind Ballabh Pant was also present. Speeches were made. New hopes were expressed in respect of a new era of forensic growth.

I had so far spoken mostly of the Judges. Let us now turn attention to those ‘luminaries of the Bar’ who had quit the stage before I joined the High Court Bar: Conlan, Moti Lal, Sunder Lal, Chowdhari, and their contemporaries. Even though they were not there their legend sustained and inspired the two sections of the Bar—Barristers and Vakils. I unfortunately did not see any of them. Even so, the glory that was Moti Lal and Sunder Lal was still there to dazzle our eyes. When I joined the High Court Bar Sir Tej Bahadur Sapru was the great giant--the towering personality. Sir Tej was not only a leader of the Bar but he led in many fields beyond the professional confines.

It is rare to find a man who is endowed with the qualities with which Sir Tej was endowed. He was a cultured man in every sense of the word—a man of versatility and charm. The Bar owed much of the respect it commanded at that time to the towering personality of Sir Tej.

He was a ‘Liberal’ in politics, he believed in constitutional methods for bringing about the emancipation of the country. He

was often accused, by people who did not have sufficient realization that there could be an honest point of view that the better method of obtaining independence was through constitutional and legal methods, of being a lukewarm patriot: nothing could be farther from the truth. Those who had the privilege of knowing Sir Tej as intimately as some of us did, knew what an ardent patriot he was. I have not the slightest doubt that some day some future historian, with a proper historical perspective, will when assessing and recording the factors which were responsible for bringing about a change in the opinion of England and the consequent 'parting of power' by the British Government to the People of India would record the noble role played by Sir Tej and some of his close associates in the stormy days preceding 1947.

Sir Tej's influence with the members of the Bar was tremendous—nothing was done by the Bar which did not meet the approval of Sir Tej—he was the 'uncrowned King'. He had won great distinctions in the scholastic, forensic and the political field. His decorations included a K. C. S. I. and a P. C.

The other Advocate of great merit whom cruel death snatched away from the stage early was Pearey Lal Banerji. He was a gifted lawyer. His forensic eloquence was the envy of many. He was shy in social life but bold and fearless in Court.

With the departure of Dr. Kailash Nath Katju, and Shyam Krishna Dar, and the death of Pearey Lal Banerji a distinct era of this Court ended.

The world indeed is a stage where Judges and lawyers play their part in a great forensic drama—a drama of real life, often breath-taking.

As long as man would remain what he has been, Courts and lawyers would function as they have.

Anecdotes and Repartees in High Court

One Hundred Years

Random Thoughts

By

SRI SANKAR SARAN

Ex-Judge, High Court, Allahabad

ONE hundred years is a long period of time in the life of an individual and it is long enough even in the life of an institution. Our High Court is celebrating its centenary this November. Undoubtedly it is a solemn occasion. In the midst of rejoicings let us not forget to take note of the fact that in this long period the fate of hundreds of thousands men have been decided and properties worth crores of rupees have been adjudicated upon.

My memory of the High Court goes back to the year 1904 when I came over as a little boy with my father who started practice here. There were six judges—only one Indian, Mr. Justice P. C. Banerji, to be followed later on by another Indian Mr. Justice Karamat Husain. In those days people talked of the High Court, its Judges and members of the Bar with awe.

When my father was at school an English Barrister, Mr. E. A. Howard's father, went from Allahabad to argue a criminal case at Gorakhpur.

The schools were closed and the Sessions Judge, Raja Parmanand, arranged for seats for the students so that they could have a good view of the Barrister.

Years, later when my father started practice here, once he was going to Gorakhpur. We had to change the train at Bhatni Junction those days. It was early morning and my father took a stroll on the platform. Some one recognised him and told his companions, "Here goes a High Court Vakil". They all got up and saluted him.

To talk to a Judge was a rare privilege. A leading lawyer of Allahabad had a dependent brother whose pastime was to meet the Judges. In those days Judges used to go out for long drives in the evenings in their horse-carriages. This dependent brother used to go to one of them and ask for a drive. In this way he used to spend his evenings in the company of the Great. One evening he approached a Judge for a drive. The Judge thought of a practical joke and readily agreed. He took him up to the Phaphamau Bridge where the Judge asked him to get down and walk back home. This long trudge probably so disheartened him that he gave up the practice of free drives.

While the highest court of appeal was at Agra, the court language was Urdu and naturally enough for long years the change over from Urdu to English was not a very easy process. There was one Judge, perhaps Mr. Justice Aikman, who was particular about good pronunciation. A lawyer got up before him and started, "My Lord, I appear for the *appeelant*". The Judge correcting the pronunciation said, "You mean the appellant".

"Yes, My Lord, I appear for the *appeelant*."

Thinking that counsel had not properly heard him, the Judge repeated, "You mean the appellant".

"Yes, My Lord "I mean the *appeelant*."

The Judge gave up the attempt and heard the appellant's argument till the end. Defective knowledge of English could create problems if there was no understanding between the Bench and the Bar.

One day the clock of the Court stopped and the Judge wanted to know the time. He asked counsel appearing before him if he could tell him the correct time. The counsel looked at the Court clock and answered back, "Shut up, My Lord ". One can well imagine the discomfiture of the learned Judge, for he did not repeat the question.

There was a very well known story of a Barrister who seldom got cases. He used to argue with great zeal when he did succeed in getting a case. A dacoity had taken place and this is how the learned counsel started his argument.

"In the district of Banda there is a village S and nearby there is a small jungle and dacoits gathered there, some coming from the east, others from the west, still others from the north and from the south. Having collected there they went to village S and looted the house of a rich man there and came back again to jungle, where they sat distributing the booty."

The learned Judge who was hearing the case got impatient and shouted, "Where are we, Mr. Sarbadhikari, and where are we ?"

The polite and patient reply was, "Still in the jungle of Banda, My Lord, distributing the booty."

In the good old days applications and *ex parte* motions were laid before a Judge who used to sit half an hour before the regular court work started. Sometimes the application Judge used to take a little longer than half an hour and his companion Judge would come and take his seat near him. Applications were taken by Judges according to turns. A newly arrived Judge from England was taking the applications one day, and after 10.30 when some technical point was raised he leaned to his companion Judge for guidance. Promptly came the remark from the counsel arguing the petition :

" My Lord, the jurisdiction of your learned brother sitting to your left to whisper in your ears, does not begin till you take the regular list."

Naturally enough both the Judges felt embarrassed but the counsel remained unperturbed.

Coming down to my own time I can recall many interesting things. There were about ten judges. There was a large number of English Barristers and Indian advocates and vakils in the court. Mr. C. C. Dillon and his son Mr. G.W. Dillon, Sir Charles Ross Alston, Mr. G. P. Boys, Mr. F. O'niel, Mr. Nihal Chand and Mr. J. N. Banerji among Barristers and Mr. Satya Chandra Mukerji and Shaila Nath Mukerji had more or less monopoly of criminal work. In civil work, Pandit Sunder Lal who just passed away, Mr. J. N. Chawdhury had recently retired from the profession, Pandit Moti Lal Nehru, Sir Tej Bahadur Sapru and Dr. Satish Chandra Banerji were undisputed leaders of the Civil Bar.

Each of the lawyers, especially the criminal lawyers, had his own peculiarities. Sir Charles Alston, direct and devastating, was a very successful lawyer. In ten minutes of his argument he used to pooh pooh the prosecution case. If he did not succeed in those ten minutes there was little chance for his winning the case. Mr. Boys, on the other hand, was ponderous and detailed and he would read out all relevant evidence till he was satisfied that nothing further could be done in the case. When he was elevated to the Bench—I write from memory—Sir Charles Alston welcoming him said, “If genius had been rightly defined as capacity to take infinite pain, your Lordship is a genius.” I often had the opportunity of rubbing shoulders against these giants and I have the highest opinion of Sir Charles Alston.

I had the unusual opportunity of appearing against Pandit Moti Lal Nehru in a criminal case. A high Indian Official's son, a Lieutenant in the Army, had married a much married elderly European lady. The father was shocked and said something uncomplimentary about his daughter-in-law who prosecuted him for defamation. The father-in-law was convicted both by the Magistrate and the Sessions Judge. Pandit Moti Lal Nehru had non-co-operated with the profession but as a friendly act he appeared for the father-in-law. The case was argued before two Judges. One of the judges was terribly upset at the conduct of this elderly lady marrying a young man. The

other Judge was friendly disposed towards the lady because he thought the parties were free to choose their partner in life. In the midst of the argument Pandit Moti Lal said, "My Lord, is it defamation to call a prostitute a prostitute?" At this remark the complainant burst into tears and one of the judges was visibly moved. Of course, the conviction was maintained but the sentence was nominal.

I have it on the authority of the late Sir William Tudball that one Judge used to pray for light in murder cases and the prayer was always answered 'Hang him.' There is an amusing story about this Judge. He belonged to some sect which did not believe in taking oath. This Judge came to the High Court many times as officiating Judge and every time he came, oath was administered to him in the Court by the Chief Justice. When he became permanent and came to the Chief Justice's Court to take the oath, as soon as the ceremony was about to begin, he turned his face away from the Chief Justice and looked at us of the Bar and said, "I have taken the oath more than once, I do not see why I should have to take oath time after time". This was rather an embarrassing position. Sir Grimwood Mears who was administering the oath, just remarked, 'I see' and began administering the oath and the protesting Judge quietly repeated the oath after him. Thereafter the Chief shook hands and sent away to his own Court-room, as if nothing unusual had taken place.

Some Judges get the reputation of being very convicting and others just the opposite. But I have seen the flow of human kindness in case of one's own countrymen by a convicting Judge. In good old days Britishers were tried in the High Court and the trial used to be by a Jury. The practice was that the Chief Justice used to preside over the Sessions Trials in the High Court. He used to come in full formal Judicial Robes and the Registrar, High Court, generally an English I.C.S. Officer, used to act as the Clerk of the Court. I remember a case where a Tommy had kicked to death a Pankha coolie and the Tommy was convicted but told in all solemnity, "The Jury

have returned the verdict of guilty." "H ! you have been found guilty by the Jury and I agree with the verdict and convict you. But in passing sentence I wish to take notice of the fact that you are in a foreign country, hundreds of miles away from home. Conditions here are hard but the law must take its course. Accordingly, I sentence you six months' rigorous imprisonment and direct that you can be sent to some jail near a hill station."

Sir Louis Stuart had the reputation of being very convicting. In the summer vacation of 1922, four European trials were fixed for disposal. Babu Lalit Mohan Banerji, Government Advocate, should have attended to them. But he had gone on a holiday to Kashmir and entrusted those cases to me. Mr. Justice Stuart was a Judge who was to preside over the trial. The first case was of an Englishman or a fairly high class Anglo-Indian serving in the Army. He was charged with an offence under section 377, I. P. C. On behalf of the prosecution I put the case as fairly as possible. Mr. Justice Stuart was very pleased with my performance and spoke to several people about it. This created the impression that even he was soft towards Europeans. The next case was of a soldier who had embezzled some money. I put the case to the Jury as fairly as possible. Mr. Justice Stuart was not at all pleased and he interrupted me several times while I conducted my case. His summing up the Jury was very strong and one-sided. The Jury returned the verdict of guilty. Justice Stuart came back to the Court-room almost running to hear the verdict of the Court and shouted, "H. S. stand up. The Jury have found you guilty and I entirely agree with the verdict. I convict you and sentence you two years' rigorous imprisonment. I consider you a disgrace to the Regiment to which you belong and disgrace to the British Army itself. He shouted to the Jailor, "Take him away" and ran back to his Chambers.

There is an amusing story he repeated concerning himself. As a Sessions Judge he had gone for local inspection to the house of a woman where a murder had taken place. The evidence was that the witness had seen the occurrence

in the first floor from the road by the hanging lantern in the room. The lawyer for the accused said that the light had been provided for the inspection and that there was no light in the room at the time of the occurrence. Judge Stuart remarked, 'nonsense'. After a little while Mr. Stuart looked for the lawyer but he was not there. People told him that he had left after his remark. Mr. Stuart sent for him and asked him why he had left. The reply was, "You have insulted me by calling me nonsense". The Judge replied, "You were and are at a perfect liberty to call my remark non-sensical". That showed the man inspite of his very rough and almost forbidding exterior. All these little things that go unnoticed but make life in Courts interesting.

Looking back 13 years after retirement from the Bench, I still feel pleased and amused at some of the incidents of those days. I could write pages about so many incidents but I cannot go on indefinitely.

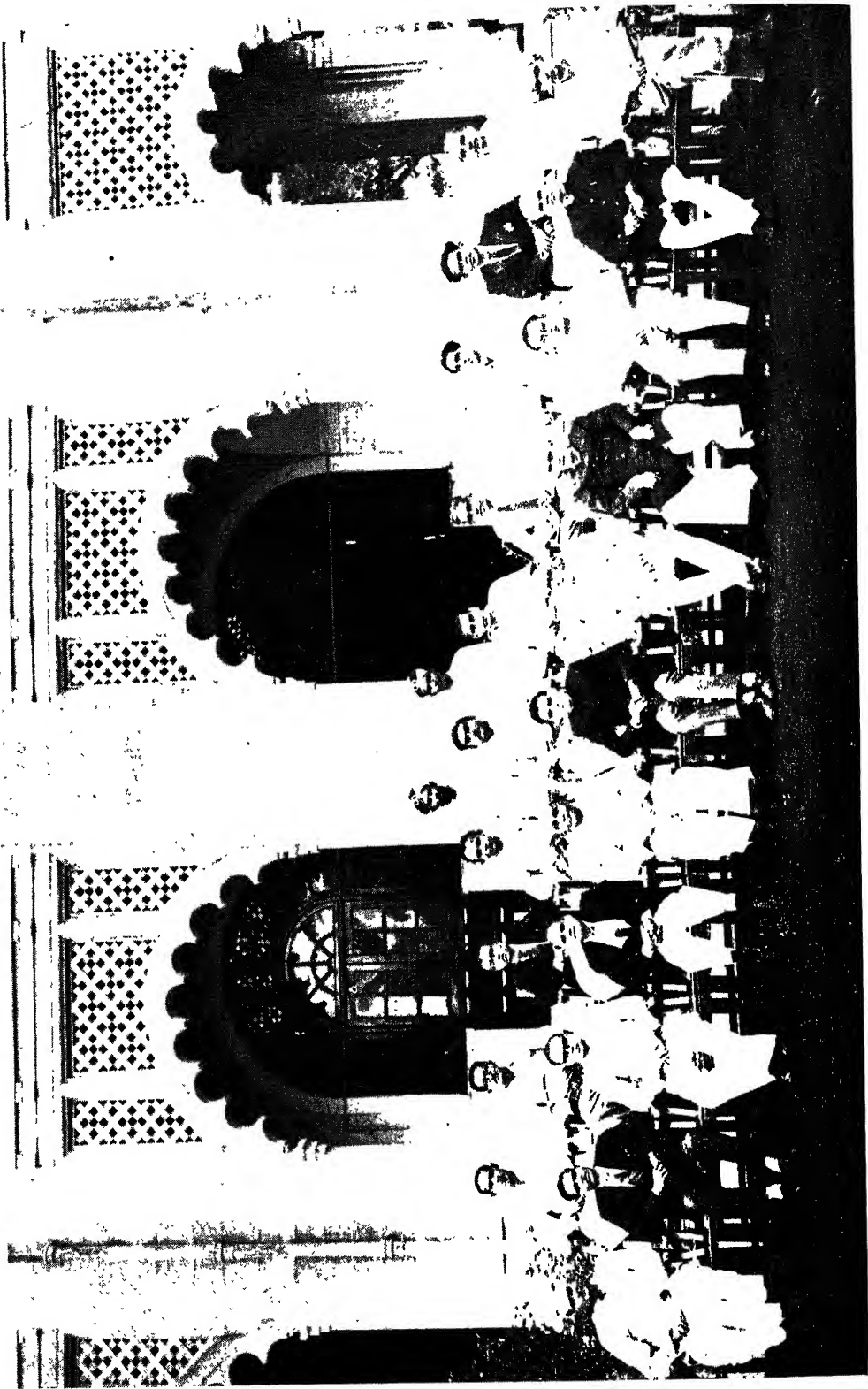
High Court Judges have rendered lot of social service even from the so-called "ivory tower" in which they are supposed to live. Sir George Knox built up the Girls High School in Allahabad and worked as the Vice-Chancellor of the University. Mr. Justice Karamat Husain was actively associated with the Crosthwaite Girls College. Mr. Justice Banerji and Mr. Justice Gokul Prasad were Vice-Chancellors of the Allahabad University. In recent times Sir Douglas Young rendered good service to Boys Scout and Guide and so did Sir Iqbal Ahmad after him. My own feeling in the matter is that in view of the detached outlook of the judges in constructive work, their guidance should lighten the burden of those who carry on the day to day running of the institutions.



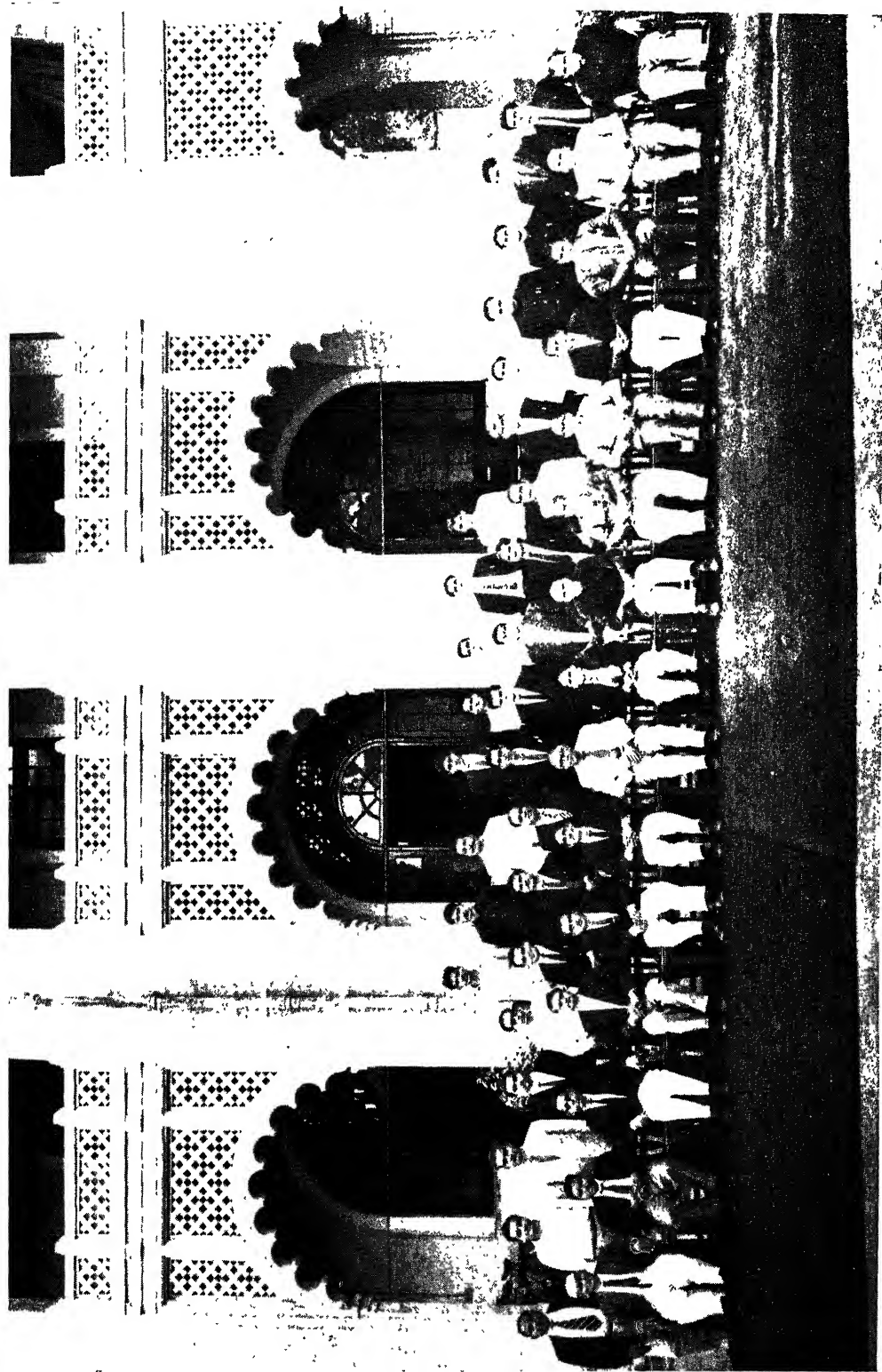


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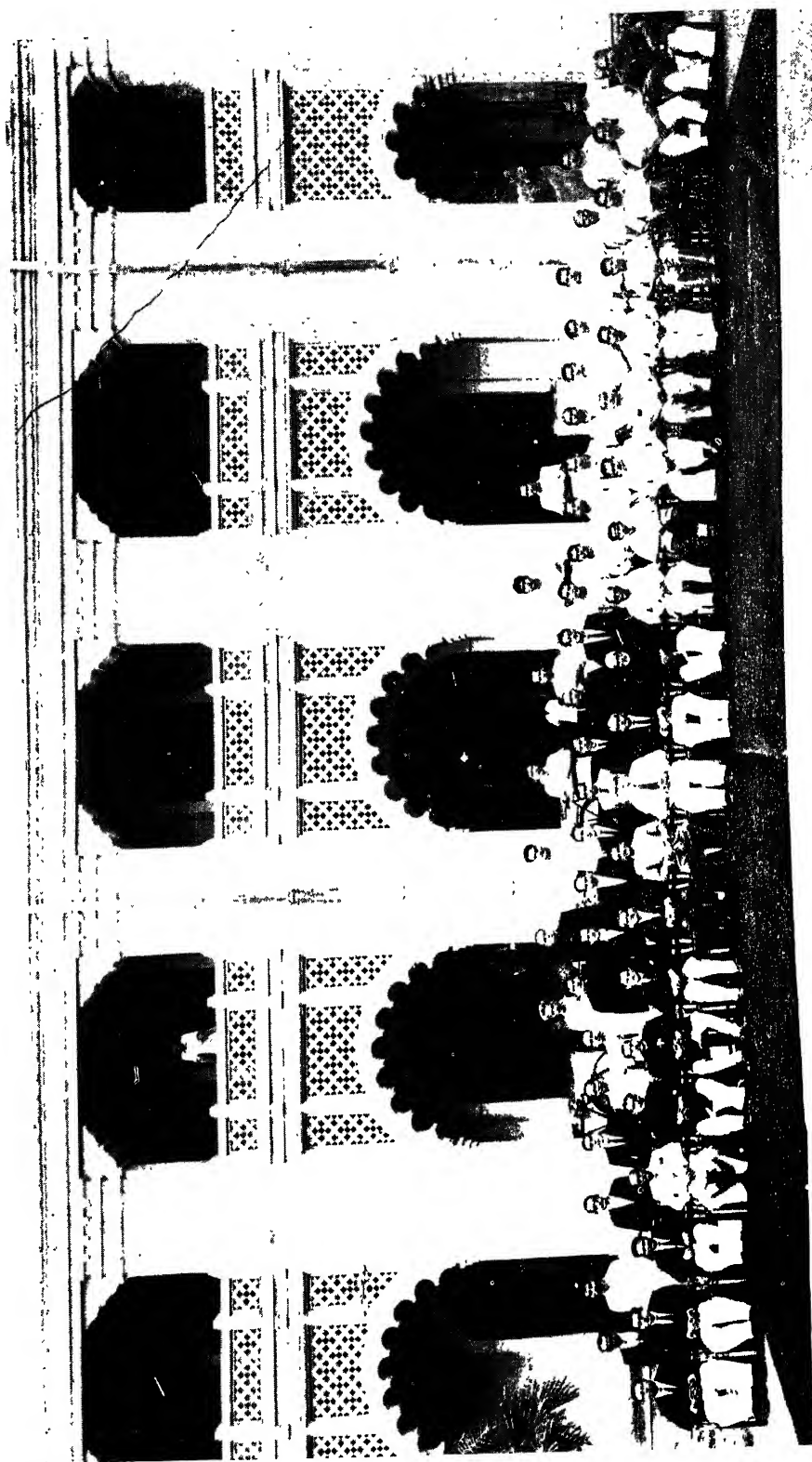
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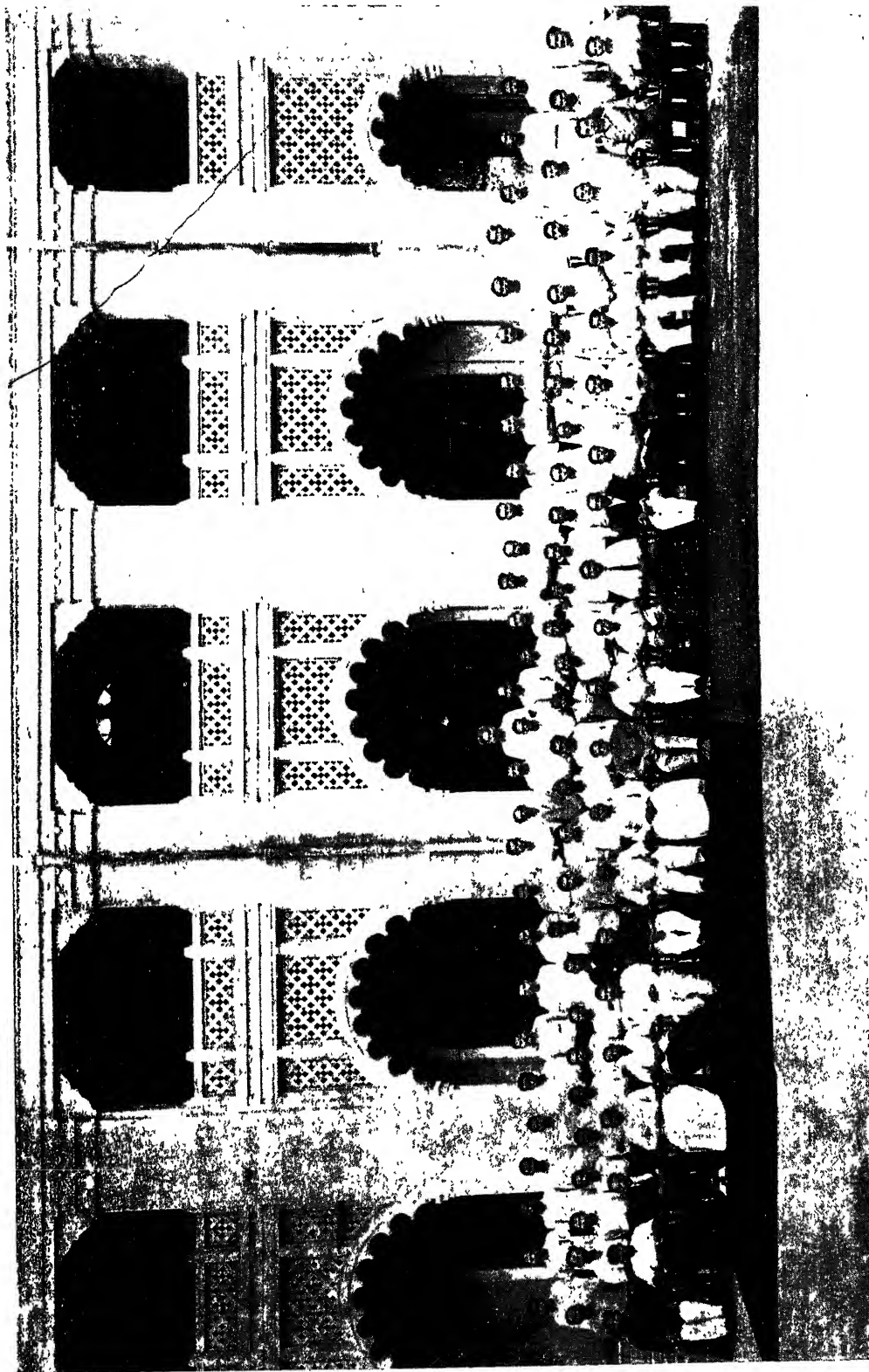
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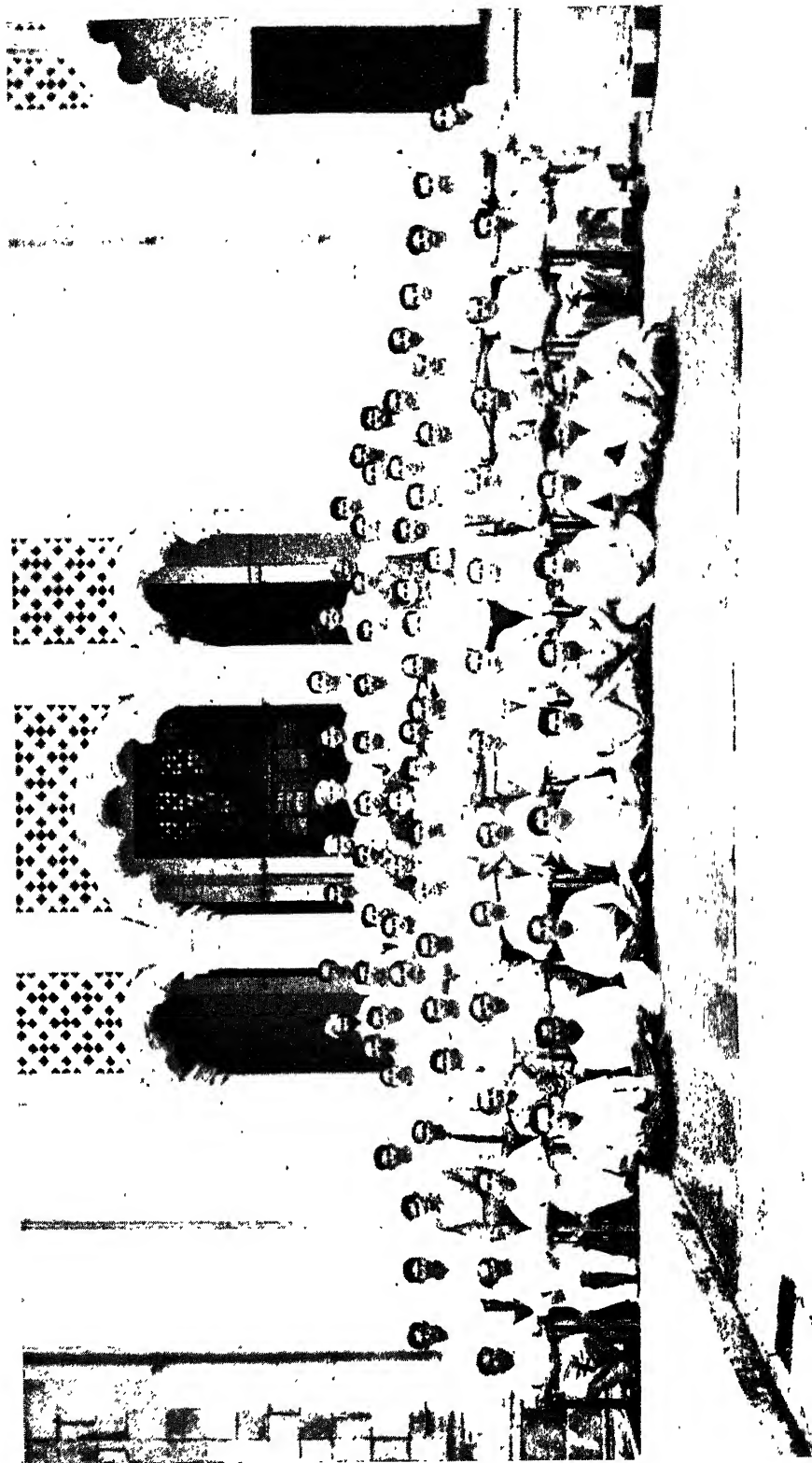


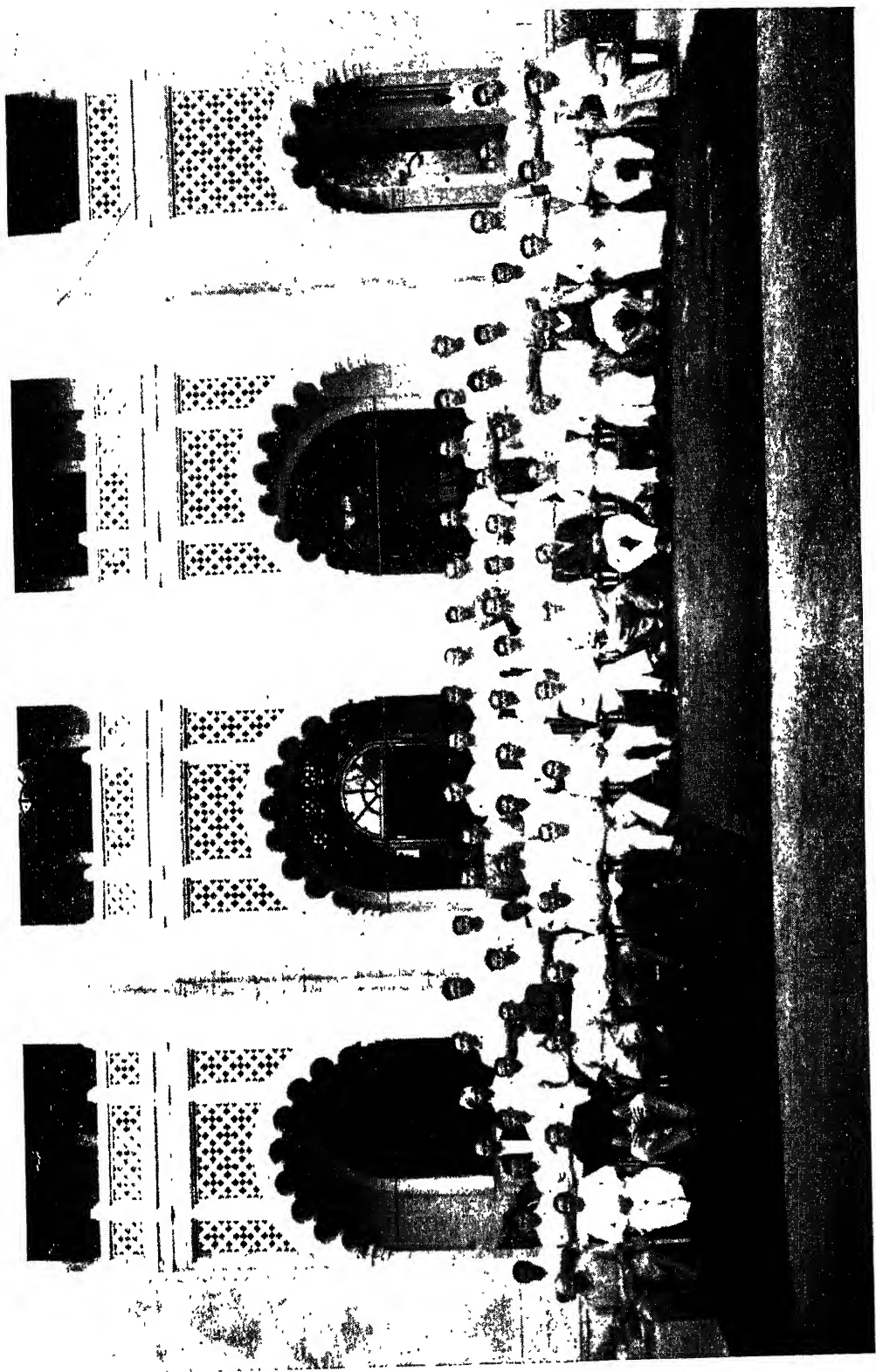
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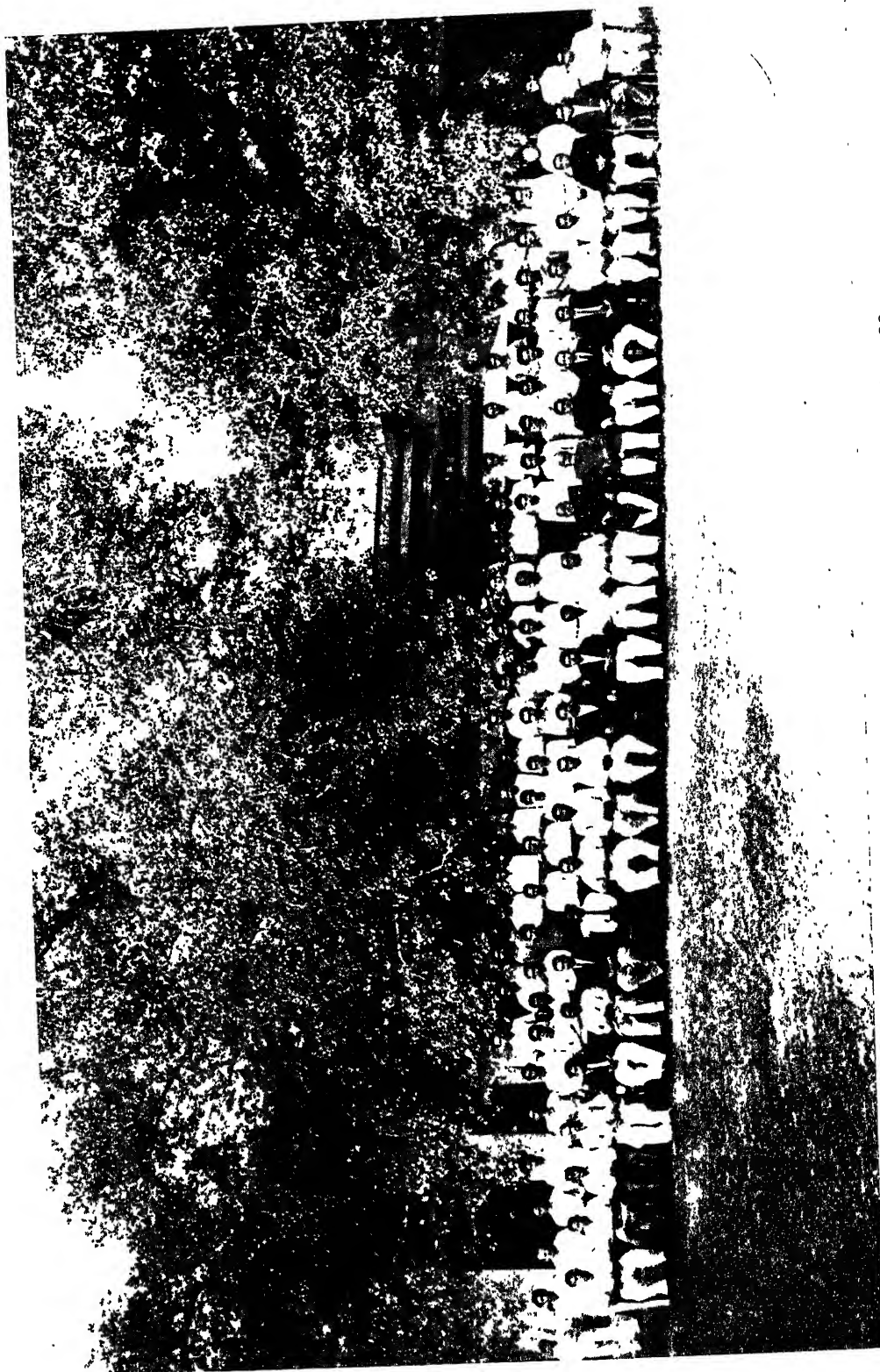
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MINISTERIAL STAFF OF THE HIGH COURT (LUCKNOW BENCH), 1966

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